

Effort to make shutdown "less painful" could violate Anti-Deficiency Act.

[The Case for Inbox Infinity](#) // Taylor Lorenz

It means accepting the fact that there will be an endless, growing amount of email in your inbox every day, most of which you will never address.

[Shutdown Roundup: GoFundMe for Feds, Weather Forecasts Suffer and Less Filet-o-Fish](#)  
// Ross Gianfortune

Feds are trying to adjust to the shutdown in its third week.

[Defense Companies Starting to Feel Effect of the Shutdown](#) // Marcus Weisgerber

Firms working for NASA, DHS, and other shuttered federal agencies are taking hits to their cash flow.

[Air Force Turns to GSA Pilot for DevOps Platform](#) // Aaron Boyd

The Air Force is using GSA's Commercial Solutions Opening pilot program to speed through the acquisition process.

[The States That Give and Get the Most Federal Dollars](#) // Bill Lucia

A new analysis identifies states that have sent more money to Washington than they saw in returned federal spending.

[IBM Wants to Use Your Smartphone to Better Predict the Weather](#) // Caitlin Fairchild

The company wants to explore untapped sensors in phones to take barometric readings.

[Detroit Gears Up for Decennial Effort to Avoid Census Undercounting](#) // Michael Grass

In a city with a long history of population losses, Mayor Mike Duggan announces the city's point person to lead community outreach to promote the 2020 count.

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**Cc:** [Connell, Erin M.](#); [Anne B. Shaver](#); [Kevin Brodar](#); [Speights, Grace E.](#)  
**Subject:** Current Draft Agenda for ABA Meeting on Monday  
**Date:** Thursday, January 10, 2019 3:30:46 PM  
**Attachments:** [ABA Government Liaison Agenda.1.10.19..docx](#)

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Thank you again for your time yesterday on the ABA Agency Liaison Meeting Plenary Session planning call.

As per the request on the call yesterday, attached is the current agenda for Monday/Tuesday (as of now).

A personal thank you to Chair Ring, Acting Chair Lipnic, and Commissioner Burrows for agreeing to join additional sessions during the past 24 hours.

The ABA will issue the "final" agenda most likely on Friday. And if the government partial shutdown ends before Monday, I know our ABA EEO Chairs would welcome additional government participation.

Thank you.

Eric

**Best Regards,**

**Eric D. Reicin**

**Vice President, General Counsel and Corporate Secretary**

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**ABA Section of Labor and Employment Law  
Equal Employment Opportunity Committee  
2019 Agency Liaison Meeting**

**January 14-15, 2019**

**The Madison Hotel**

**1177 15th Street, NW, Washington, D.C.**

**Monday, January 14, 2019**

12:00 – 12:10 p.m.

**Opening Remarks, EEO Committee Co-Chairs**

Anne B. Shaver, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, California

Kevin Brodar, SMART-TD Union, Cleveland, Ohio

Grace Speights, Morgan Lewis & Bockius LLP, Washington, DC

12:10 – 12:30 p.m.

**Introduction of All Attendees**

12:30 – 2:00 p.m.

**2019 Priorities from the Agency Leaders and Updates on Interagency Coordination**

- Hon. Eric Dreiband, Assistant Attorney General, Civil Rights Division, Department of Justice
- Hon. Kate O'Scannlain, Solicitor of Labor, U.S. Department of Labor
- Hon. John Ring, Chair, National Labor Relations Board
- Hon. Victoria Lipnic, Acting Chair, Equal Employment Opportunity Commission
- Craig Leen, Director, Office of Federal Contract Compliance Programs

Facilitators:

- Lisa Banks, Katz, Marshall & Banks, LLP, Washington, DC
- Eric D. Reicin, MorganFranklin, Inc., McLean, Virginia

2:00 – 3:00 p.m.

**Roundtable Discussion on Harassment**

- Hon. John Ring, Chair, National Labor Relations Board
- Hon. Charlotte A. Burrows, U.S. Equal Employment Opportunity Commission

Facilitators:

- Julia Campins, Campins Benham-Baker, Lafayette, California
- Randy Coffey, Fisher Phillips, Kansas City, Missouri

3:00 – 3:15 p.m.

**Break**

3:15 – 4:15 p.m.

**Update on Agency Enforcement Priorities**

- Hon. Charlotte A. Burrows, U.S. Equal Employment Opportunity Commission
- Marika Litras, Acting Deputy Director, Office of Federal Contract Compliance Programs
- Beverley Dankowitz, Associate Solicitor of Labor, Civil Rights and Labor Management Division, U.S. Department of Labor

Facilitators:

- Erin M. Connell, Orrick, San Francisco, California
- Barry Goldstein, Goldstein, Borgen, Dardarian & Ho, Oakland, California

4:15 – 5:00 p.m.

**Open Discussion regarding EEOC's Office of Research, Information and Planning**

- Hon. Victoria Lipnic, Acting Chair, Equal Employment Opportunity Commission

Facilitators:

- Esther Lander, Akin Gump, Washington DC
- Michael Levin-Gesundheit, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, California

5:00 – 6:00 p.m.

Reception with Heavy Hors d'Oeuvres

**Tuesday, January 15, 2019**

7:30 – 9:00 a.m.

Breakfast

9:00 – 10:00 a.m.

**OFCCP At the Crossroads: An Update On New Directives**

- Keir Bickerstaffe, Counsel for Interpretations and Advice, Civil Rights and Labor Management Division, U.S. Department of Labor
- Bob LaJeunesse, Branch Chief for Expert Analysis, Office of Federal Contract Compliance Programs
- Tina Williams, Acting Director of Program Operations, Office of Federal Contract Compliance Programs

Facilitators:

- Jim Finberg, Altshuler Berzon LLP, San Francisco, California
- David Fortney, Fortney & Scott, Washington DC

10:00 – 10:45 a.m.

**Pattern or Practice Litigation**

- Beverly Dankowitz, Associate Solicitor of Labor, Civil Rights and Labor Management Division, U.S. Department of Labor
- Jeff Lupardo, Enforcement Counsel, Office of Federal Contract Compliance Programs

Facilitators:

- Nancy Abell, Paul Hastings, LLP, Los Angeles, California
- Mike Subit, Frank Freed Subit & Thomas, Seattle, Washington

Break

10:45 – 11:00 a.m.

11:00 – 11:45 a.m.

**Immigration Update**

- Jon Kronheim, Counsel for Trial Litigation, Fair Labor Standards Division, U.S. Department of Labor
- Matt Bernt, Associate Solicitor, Division of Employment and Training Legal Services, U.S. Department of Labor

Facilitators

- Bob O'Hara, Hartford, Connecticut
- Yona Rozen, AFL-CIO, Washington DC

11:45 a.m. – 12:30 p.m.

**Agency Feedback with EEOC Commissioners and EEO Committee Closing Remarks**

- Hon. Victoria Lipnic, Acting Chair, Equal Employment Opportunity Commission
- Hon. Charlotte A. Burrows, U.S. Equal Employment Opportunity Commission
- EEO Committee Co-Chairs

- Anne B. Shaver, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, California
- Kevin Brodar, SMART-TD Union, Cleveland, Ohio
- Grace Speights, Morgan Lewis & Bockius LLP, Washington, DC

**From:** [Bloomberg Law Daily Labor Report](#)  
**To:** [Ring, John](#)  
**Subject:** Daily Labor Report Highlights  
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## DAILY LABOR REPORT®

### Highlights

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#### TOP STORIES

##### [New Overtime Eligibility Rule Heads to White House for Review](#)

By Jaclyn Diaz

The Labor Department's long-awaited proposal to expand overtime eligibility is heading to the White House's Office of Information and Regulatory Affairs, sources familiar with the rule told Bloomberg Law. This is the first step of regulatory review before a proposal can be released to the public for comments.

##### [United Airlines' False Claims Win Paused for 'Blue Collar' Claim](#)

By Daniel Seiden

A former United Airlines Inc. employee may get another chance for a rehearing on his claim that the company used inferior parts and falsified records under an Air Force contract, the U.S. Court of Appeals for the Fourth Circuit said.

##### [White Sam's Club Worker Scores Trial Over Double-Standard Gripe](#)

By Patrick Dorrian

A white tire technician at a Sam's East Inc. store in Georgia may be able to convince a jury he was fired for complaining that a black co-worker wasn't

disciplined for calling him a "redneck" and "hillbilly" during a workplace confrontation, a federal judge ruled.

### [Small Contractors Face Most Pressure as Shutdown Drags On](#)

By Louis C. LaBrecque

Contractors with small, specialized practices could be at risk of losing employees and may have to move workers to other projects or use the downtime for training, as the partial government shutdown that began Dec. 22 continues.

## **DISCRIMINATION**

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### [Lockheed Tells Court Race Bias Class Should Be Scrapped Again](#)

By Patrick Dorrian

A group of black workers who allege that Lockheed Martin Corp.'s performance appraisal system discriminates based on race shouldn't be allowed to pursue their claims as a class, the company told a federal judge in the District of Columbia Jan. 10.

### [Bechtel Arm's Benchings of Worker Were Mental Health Bias: Suit](#)

By Patrick Dorrian

Bechtel Marine Propulsion Corp. violated federal disability rights law when it benched and then fired an employee working at Bettis Atomic Power Laboratory because it believed he had a psychiatric impairment, a new lawsuit charges.

### [Black Male Professor Gets Nod on 'Intersectional' Bias Claim](#)

By Patrick Dorrian

A black man with more than 30 years of public health experience should be allowed to pursue his claim that the University of Cincinnati refused to hire him because of the combination of his race and sex, a federal magistrate judge said.

## WAGE & HOUR

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### [Shutdown Amounts to 'Involuntary Servitude,' Lawsuit Says](#)

By Andrew Wallender

Five federal employees have asked a court to stop the government from requiring them to work without pay during the partial shutdown.

### [Labor Department Collects \\$150K for Md. Hotel Workers](#)

By Porter Wells

The owner of two hotel franchises will pay \$157,000 to settle claims he underpaid employees working overtime.

### [Frontier Pact Will Boost Pilots' Wages by 53 Percent](#)

By Louis C. LaBrecque

Frontier Airlines pilots ratified a new five-year contract that will provide an average 53 percent across-the-board pay increase when the contract becomes effective on Jan. 16, according to both the company and the pilots' union.

### [Chamber Chief Cautions Over National \\$15 Minimum Wage](#)

By Tyrone Richardson

A \$15 minimum wage might halt some of the progress that immigration reform and more worker training initiatives could bring to the nation's economy, U.S. Chamber of Commerce President Thomas Donohue said Jan. 10.

### [Walgreens Faces Cashier Seating Class Suit Despite Settlement](#)

By Porter Wells

Walgreen Co. has to face class claims that the store didn't provide suitable seating for its cashiers because those claims weren't part of a worker's 2014 settlement, the Ninth Circuit said.

## STATE & LOCAL LAWS

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### [Minn. Worker Rights Would Be Strengthened Under Three New Bills](#)

By Michael J. Bologna

Rights accorded to Minnesota workers could be enhanced under three proposals introduced in the state Legislature that would provide paid family and medical leave, punish employers for underpaying employees, and lower the legal threshold for demonstrating sexual harassment.

### [Seattle to Appeal Hotel Workers' Rights Decision](#)

By Paige Smith

Hotel workers in Seattle discovered that a first-in-the-nation ballot measure providing sexual harassment protections was overturned on Dec. 24 by the state appellate court, effective immediately. Now union officials and the city of Seattle plan to fight back in court, according to UNITE HERE.

### [States of Work: Conn. Wage Order; Fla. Senate #MeToo Settlement](#)

By Chris Marr

Dive into this week's "States of Work" roundup of state and local labor and employment developments. This week, paid leave and minimum wage bills lead off Connecticut's legislative session, and a Florida Senate sexual harassment case wraps up with a \$900,000 settlement.

## LABOR RELATIONS

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### [Federal Unions Call for End to Shutdown During AFL-CIO Rally](#)

By Louis C. LaBrecque

Members of dozens of federal employee unions were represented at a rally Jan. 10 where one of the top messages was that Senate Majority Leader Mitch McConnell needs to take up legislation to reopen the government.

## IMMIGRATION

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## [Undocumented Hirings May Rise as Shutdown Takes E-Verify Offline](#)

By Leslie Patton

Restaurants hungry for workers say they'll keep hiring even though a government system to help them weed out undocumented employees is, ironically, not working because of the government shutdown over immigration.

### **HEALTH CARE & BENEFITS**

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## [General Dynamics, US Foods Jump Into N.Y. Times Pension Spat](#)

By Jacklyn Wille

General Dynamics Corp., US Foods Inc., and United Natural Foods Inc. are among the employers jumping into a lawsuit asking how much money the New York Times Co. owes a union pension fund.

## [Uber Wins Disqualification of Former Chamber Lawyer \(1\)](#)

By Perry Cooper

An attorney who worked with Uber Inc. to fight driver classification while at the U.S. Chamber of Commerce can't represent a class of limo drivers suing Uber now over the same employment law issue, a federal court said Jan. 9.

## [MetLife Faces Suit Over Postal Worker Who Froze to Death](#)

By Jacklyn Wille

Metropolitan Life Insurance Co. must defend a lawsuit seeking death benefits on behalf of a postal worker who allegedly froze to death after finishing a shift in blizzard-like conditions.

### **SAFETY & HEALTH**

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## [UPS Egress Citations, Settlement Could Put Logistics Firms on Notice](#)

By Fatima Hussein

What becomes of a set of repeat safety citations issued to United Parcel Service Inc. over a common logistics hazard could send ripples through the warehousing and package handling industry, safety experts say.

### [Cottrell Must Face Trucker's Timely Repetitive-Strain Claim](#)

By Martina Barash

Cottrell Inc. won't be able to seek immediate review of a decision finding a trucker's repetitive-strain injury timely.

### [Mail Carrier's Heat-Related Death Leads to \\$150,000 in Fines](#)

By David McAfee

The U.S. Postal Service faces nearly \$150,000 in fines following the heat-related death of a mail carrier in Southern California.

## **ALSO IN THE NEWS**

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### ['Use or Lose' Leave to Be Restored for Feds Affected by Shutdown](#)

By Louis C. LaBrecque

Federal employees who scheduled "use-or-lose" leave by Nov. 24 that was canceled because of the partial government shutdown will get it back.

### [Kelly Services Wins Attorneys' Fees in Noncompete Case](#)

By Brian Flood

Staffing company Kelly Services Inc. is entitled to recover attorneys' fees from former employees it sued for violating their noncompete agreements, the U.S. Court of Appeals for the Sixth Circuit ruled Jan. 10.

### [Trump Claims Credit for Booming Job Market That Fed Let Run Hot](#)

By Shobhana Chandra

It's the best U.S. job market in decades, and Donald Trump is clearly proud of it. What's less certain is how much responsibility he can claim.

## [Shutdown Causing 'Real Damage,' Aviation Industry Says](#)

By Andrew Wallender

The partial government shutdown is harming morale and inflicting "real damage" at airports across the country, a coalition of 34 aviation industry groups and labor unions said in an open letter to President Donald Trump and congressional leaders Jan. 10.

## [Jobless Claims Fall to Four-Week Low in Tight U.S. Labor Market](#)

By Shobhana Chandra

U.S. filings for unemployment benefits fell to a four-week low even amid a partial federal government shutdown, showing healthy demand for workers at the start of the year.

## [DOL's Cancellation of \\$75M Vets Support Contract Upheld](#)

By Daniel Seiden

Inverness Technologies Inc. couldn't show that the U.S. Department of Labor unlawfully canceled its \$75 million contract to provide services under a veterans assistance program known as the Transition Assistance Program, the U.S. Court of Federal Claims ruled.

## [Sanders Apologizes for Harassment Among 2016 Campaign Staff](#)

By Arit John

Senator Bernie Sanders apologized Jan. 10 to women who said they were subjected to sexual harassment or misconduct while working for his 2016 presidential campaign.

## [These Finance Firms Are Cutting Jobs in 2019 Amid Market Turmoil](#)

By Shelly Hagan

Asset managers and banks are under pressure as volatility roils global markets and investors pile into passive, low-fee funds. The \$3 trillion hedge fund

market has been hit hard as performance sank and funds closed last year. One recruiter thinks more shakeout lays ahead.

## **LATEST CASES**

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### [Case: Discrimination/Sexual Harassment \(D.N.J.\)](#)

Two female employees for the Jersey City Department of Public Works can proceed on their sexual harassment claims, because they alleged, among other things, that a female supervisor made lewd comments to both of them, discussed her sexual activity, indicated she was bisexual, and inappropriately touched one of them, and that a male supervisor criticized and disciplined female employees while overlooking male employee's transgressions. The case is *Reynolds v. Jersey City Dep't of Pub. Works*, 2019 BL 4367, D.N.J., No. Civ. No. 2:18-1418, 1/4/19.

### [Case: Disability Discrimination/Discharge \(11th Cir.\)](#)

A medical assistant's disability bias claims were properly dismissed, because she didn't show that her violation of a company policy against reporting to work impaired due to her use of undisclosed prescription drugs wasn't the real reason she was fired. She wasn't fired solely for coming to work impaired due to her depressive disorder and none of the factors she cited--such as a supervisor's comment that the employee "was having another one of her episodes"--was enough to rebut the legitimate reason for her termination, the court found. The case is *Connelly v. Wellstar Health Sys., Inc.*, 2019 BL 6727, 11th Cir., 18-11217 Non-Argument Calendar, unpublished 1/9/19.

### [Case: Wage & Hour/Overtime \(E.D.N.Y.\)](#)

A packer for a New York supermarket gave enough information to support his claim for unpaid overtime, because he said that his weekly 8 hours of overtime pay failed to include an extra 1.5 hours he worked each week on average. The case is *Huang v. GW of Flushing I, Inc.*, 2019 BL 6982, E.D.N.Y., No. 17-CV-3181 (PKC)(JO), 1/9/19.

### [Case: Wage & Hour/Hours Worked \(N.D. Ala.\)](#)

An Alabama bathroom remodeling company didn't establish that its practice of paying an installer a flat rate for 45 minutes of loading and unloading time complied with federal wage requirements, because there is no record of the actual time he spent on those tasks, and it's unclear whether the company included the loading and unloading time in calculating his overtime. The case is *Henry v. Wells Remodeling, LLC*, 2019 BL 7492, N.D. Ala., No. 2:16-cv-00511-SGC, 1/9/19.

#### [Case: Discrimination/Hostile Work Environment \(D.D.C.\)](#)

A black career diplomat with the U.S. Department of State can't proceed on his claim that he was subjected to a race-based hostile work environment, because his allegations mainly stemmed from his non-promotions and reduction of duties. His personal humiliation that his career was stagnating isn't indicative of a workplace that was intimidating or offensive enough to support his claim, and though he did allege that a high-level department employee told him to consult with human resources because "there were 'black people' there," this was just an isolated comment, the court stated. The case is *Moore v. Dep't of State*, 2019 BL 8304, D.D.C., 17-cv-1531 (DLF), 1/9/19.

#### [Case: Discrimination/Statute of Limitations \(Pa. Commw. Ct.\)](#)

A Pennsylvania state trial court improperly dismissed as untimely a protected-age former employee's age discrimination suit against the Pennsylvania Public Utility Commission based on his failure to file suit within two years of receiving his right-to-sue letter from the state. The appeals court determined that his complaint was timely, because he filed suit within two years of receiving a separate letter that definitively stated that his case was closed, and it wasn't unreasonable for the employee to assume that it was this letter—and not the first one—that triggered the start date for the limitations period. The case is *Rodrock v. Commonwealth*, 2019 BL 6634, Pa. Commw. Ct., 998 C.D. 2017, 1/9/19.

#### [Case: Disability Discrimination/Hiring \(S.D.N.Y.\)](#)

A disabled job seeker can't go ahead with his \$10 million disability bias claim against a staffing agency, because he failed to plausibly allege that he wasn't placed with an employer due to his physical disabilities and he didn't cite a

single comment indicating that the agency was biased or gave non-disabled applicants preferential treatment. The case is Decastro v. Randstad Prof'ls US, LLC, 2019 BL 6164, S.D.N.Y., No. 15-CV-0944 (RA), 1/8/19

#### [Case: Discrimination/Retaliation \(4th Cir.\)](#)

An employee for an electric company didn't show that she was denied promotions in retaliation for filing a lawsuit alleging that the company subjected her to employment discrimination. The relevant decision makers knew of her EEOC charge in the matter more than one year before they didn't promote her, and the employee received an above-average performance rating even after filing the charge, which undercuts any inference that the company was in a retaliatory mindset. The case is Coleman v. Schneider Elec. USA, Inc., 2019 BL 7037, 4th Cir., 18-1265, unpublished 1/9/19.

#### [Case: Disability Discrimination/Venue Transfer \(M.D. Pa.\)](#)

An RTI International employee has to move his disability bias claims from the federal district court in Pennsylvania where he filed his claims to a federal court in North Carolina, because he signed an employment agreement mandating that employment disputes be heard in the company's home state and the company's answer to the complaint that he filed with the Pennsylvania Human Rights Commission didn't waive its objection to venue. The case is Roddy v. RTI Int'l, 2019 BL 4671, M.D. Pa., 4:18-CV-01710, 1/7/19.

#### [Case: Disability Discrimination/Discharge \(M.D. Tenn.\)](#)

A former Clarksville, Tennessee, city water department probationary employee with post-traumatic stress disorder can't go ahead with any of his disability-related claims after he was fired two months after he was hired, because he failed to show that his various performance problems weren't the real reasons he was fired, he attributed his firing to his refusal to participate in team pranks rather than his disability, and he didn't complain about disability bias before he was fired, among other factors. The case is Haynes v. City of Clarksville, 2019 BL 3187, M.D. Tenn., No. 3:17-cv-01267, 1/3/19.

#### [Case: Discrimination/Hostile Work Environment \(S.D. Ohio\)](#)

A homosexual delivery person for the Athens Messenger can move forward



with a claim that he faced a hostile work environment on the basis of his sex, in addition to being fired. His employment agreement indicated that he may have been an independent contractor, but he alleged that the organization dictated his routes and times of delivery, provided products, and subjected him to reviews and potential discipline, and he established a plausible claim by alleging that the harassing comments and physical harassment he suffered were motivated by sex stereotyping, the court said. The case is *Varner v. APG Media of Ohio, LLC*, S.D. Ohio, No. 2:18-cv-706, 1/9/19.

#### [Case: Discrimination/Retaliation \(M.D. Ga.\)](#)

A black assistant principal can go to trial on his claim that a Georgia school district denied him promotions to full principal jobs in retaliation for his internal complaint alleging race discrimination. He gave sworn deposition testimony that the school district's chief human resources officer said that he wouldn't be promoted unless he rescinded the complaint, and though the school district denies this allegation, it's sufficient to get the claim in front of a jury. The case is *Powell v. Muscogee Cty. Sch. Dist.*, 2019 BL 7448, M.D. Ga., No. 4:17-CV-185 (CDL), 1/9/19.

#### [Case: Discrimination/Retaliation \(M.D. Ga.\)](#)

A white tire technician at a Sam's East Inc. store in Georgia is entitled to a trial on his claim that he was fired for complaining that a black co-worker wasn't disciplined for calling him a "redneck" and hillbilly during a workplace confrontation. Although Sam's asserted that the technician was fired for being rude and disrespectful while making his complaint, a jury could disbelieve this explanation because the technician denied that he engaged in such conduct, an employee who viewed a since-destroyed videotape of the incident didn't think that the technician was intimidating or deserved to be terminated, and the store manager testified that she was willing to rehire him, the court stated. The case is *Bland v. Sam's East, Inc.*, 2019 BL 7460, M.D. Ga., No. 4:17-CV-190 (CDL), 1/9/19.

#### [Case: Labor Relations/Settlements \(6th Cir.\)](#)

The NLRB's application for summary enforcement of its default judgment against D2 Abatement, Inc. and its alter ego Premier Environmental Solutions,

LLC, is granted. The NLRB had determined that D2 failed to comply with the terms of its settlement agreement with International Union of Painters and Allied Trades. The case is NLRB v. D2 Abatement, Inc., 2019 BL 6471, 6th Cir., No. 18-2352, 1/8/19.

#### [Case: Discrimination/Sexual Harassment \(D.D.C.\)](#)

Two female employees of Ergo Solutions, LLC can go to trial on a claim that one of the company's owners sexually harassed them through inappropriate touching and, on one occasion, a text containing a picture of his genitals. The company presented evidence that both employees engaged in welcomed and consensual sexual relationships with the owner, but contradicting evidence suggested a genuine dispute over whether his advances were unwelcome, and the employees' allegations that they repeatedly complained to their supervisors, another owner, and a human resources director might suggest that Ergo wasn't adhering to its sexual harassment policy, the court said. The case is Smith v. Ergo Sols., LLC, D.D.C., 14-382 (JDB), 1/9/19.

#### [Case: Individual Employment Rights/Wrongful Discharge \(Mont.\)](#)

A former public works director for the city of Choteau, Montana, unsuccessfully appealed a district court order dismissing his complaint alleging wrongful discharge and enforcing a settlement agreement. When the city's attorney called him to ask if he would accept a settlement offer of six months wages and a standard release of claims, he had replied "yeah, whatever, we're done," but later the employee claimed that his statement wasn't an acceptance of the agreement and was made under duress. The Montana Supreme Court upheld the district court's decision as correct. The case is Hirsch v. City of Choteau, 2019 BL 6204, Mont., No. DA 18-0231, 1/8/19.



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**To:** [Ring, John](#)  
**Subject:** "Either Way I Don't Get Paid:" Excepted Federal Workers Ponder How Long They'll Work Without Pay  
**Date:** Thursday, January 10, 2019 10:45:09 AM

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## GovExec Update

January 10, 2019



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### ['Either Way I Don't Get Paid:' Excepted Federal Workers Ponder How Long They'll Work Without Pay](#) // Eric Katz

Weston Szymanski has reported to his job at the Food and Drug Administration as normal since the beginning of the partial government shutdown. His wife, who also works at the FDA, an agency largely without appropriations despite being part of the otherwise fully funded Health and Human Services Department, is home on furlough.

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**From:** [GovExec Today](#)  
**To:** [Ring, John](#)  
**Subject:** Excepted employees ponder how long they'll work without pay; Democrats blast shutdown as "madness"  
**Date:** Thursday, January 10, 2019 5:31:49 AM

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**GovExec Today**

January 10, 2019



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**['Either Way I Don't Get Paid:' Excepted Federal Workers Ponder How Long They'll Work Without Pay](#)** // Eric Katz

Aside from personal difficulties, employees warn of mission-critical work going undone and endangering the public.

**[Back Pay for Some Contractors, TSP Loosens Loan Rules and More](#)** // Erich Wagner

A weekly round-up of pay and benefits news.

**Brought to you by Harvard National Preparedness Leadership Initiative**

**[Making the Case for Leadership Development as an Imperative](#)**

Today government employees and their organizations are facing far greater challenges than in the past at an accelerating pace. As a consequence, the focus is naturally shifting from realizing a future vision to becoming embroiled in day-to-day tasks and transactions.

[Read More](#)

**[Furious Democrats Blast Shutdown as 'Stupid' and 'Madness'](#)** // Charles S. Clark

"Who's going to want to work for the federal government?" House Majority Leader Steny Hoyer asked. Lawmakers hear from angry federal employees.

**[House Approves Spending Bill With 1.9 Percent Civilian Pay Raise in Latest Attempt to Reopen Government](#)** // Erich Wagner

Measure is the first of four the House plans to take up; President Trump walked out of a meeting with congressional leadership Wednesday after Democrats declined to support his \$5.7 billion border wall funding demand.

**[GPO Redirects Census Printing Contract Following Legal Challenge](#)** // Charles S. Clark

Forms and mailers for 2020 count awarded to R.R. Donnelley for \$114 million.

**[25K Feds Still Await Court-Ordered Payout From 2013 Shutdown](#)** // Eric Katz

The 2013 case set the precedent that lawsuits during the current shutdown hope to follow.

[Can the U.S. Military Build a Border Wall Even as It Struggles to Rebuild Itself?](#) // Joe Sexton

President Donald Trump has floated the idea that the military build his much-touted border wall. The idea might become reality.

[Shutdown Roundup: How Beer is Affected, Which States Feel the Most Heat and HUD's Letter to Landlords](#) // Ross Gianfortune

This government shutdown is approaching the longest-ever gap in funding.

[Rep. Kelly: Shutdown Hurts Government's IT Workforce](#) // Heather Kuldell

The shutdown will have long-term consequences on federal agencies' recruiting and retention efforts, Rep. Robin Kelly said.

[How One State Struggles to Enforce Its Immigration Law](#) // Teresa Wiltz

In Georgia, a state-created board is charged with monitoring whether cities are helping crack down on illegal immigration.

[Industry Says Not So Fast to OMB's Proposed Data Center Policy Changes](#) // Aaron Boyd

While only a few comments were submitted by deadline, most called for significant changes to the proposed metrics and overall intent of the draft Data Center Optimization Initiative.

[Amid Shutdown, Feds Figure Out Ways to Fund Food Stamp Benefits. For Now.](#) // Laura Maggi

States have until Jan. 20 to request an early issuance to make sure they receive February SNAP funding.

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[Making the Case for Leadership Development as an Imperative](#)

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**From:** [GovExec Breaking News](#)  
**To:** [Ring, John](#)  
**Subject:** Feds Impacted by Shutdown Can Roll Over "Use-or-Lose" Leave, OPM Clarifies  
**Date:** Thursday, January 10, 2019 4:57:11 PM

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## GovExec Breaking News

January 10, 2019



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### [Feds Impacted by Shutdown Can Roll Over 'Use-or-Lose' Leave, OPM Clarifies](#) // Eric Katz

Federal employees impacted by the partial shutdown can carry over their "use-or-lose" annual leave into 2019, the Office of Personnel Management clarified in new guidance this week, as long as the days off were scheduled prior to the closing of their agencies.

[Read full article »](#)

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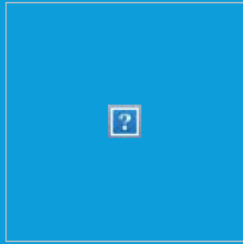
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**From:** [Bloomberg Law Daily Labor Report](#)  
**To:** [Ring, John](#)  
**Subject:** First Move: Shutdown Stops Appointments • UPS Citations Get Scrutiny  
**Date:** Thursday, January 10, 2019 7:09:00 AM

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What you need to know to start your day.

## Shutdown Stops Appointments • UPS Citations Get Scrutiny



By [Patricio Chile](#)

### SHUTDOWN HALTS TRUMP APPOINTMENTS

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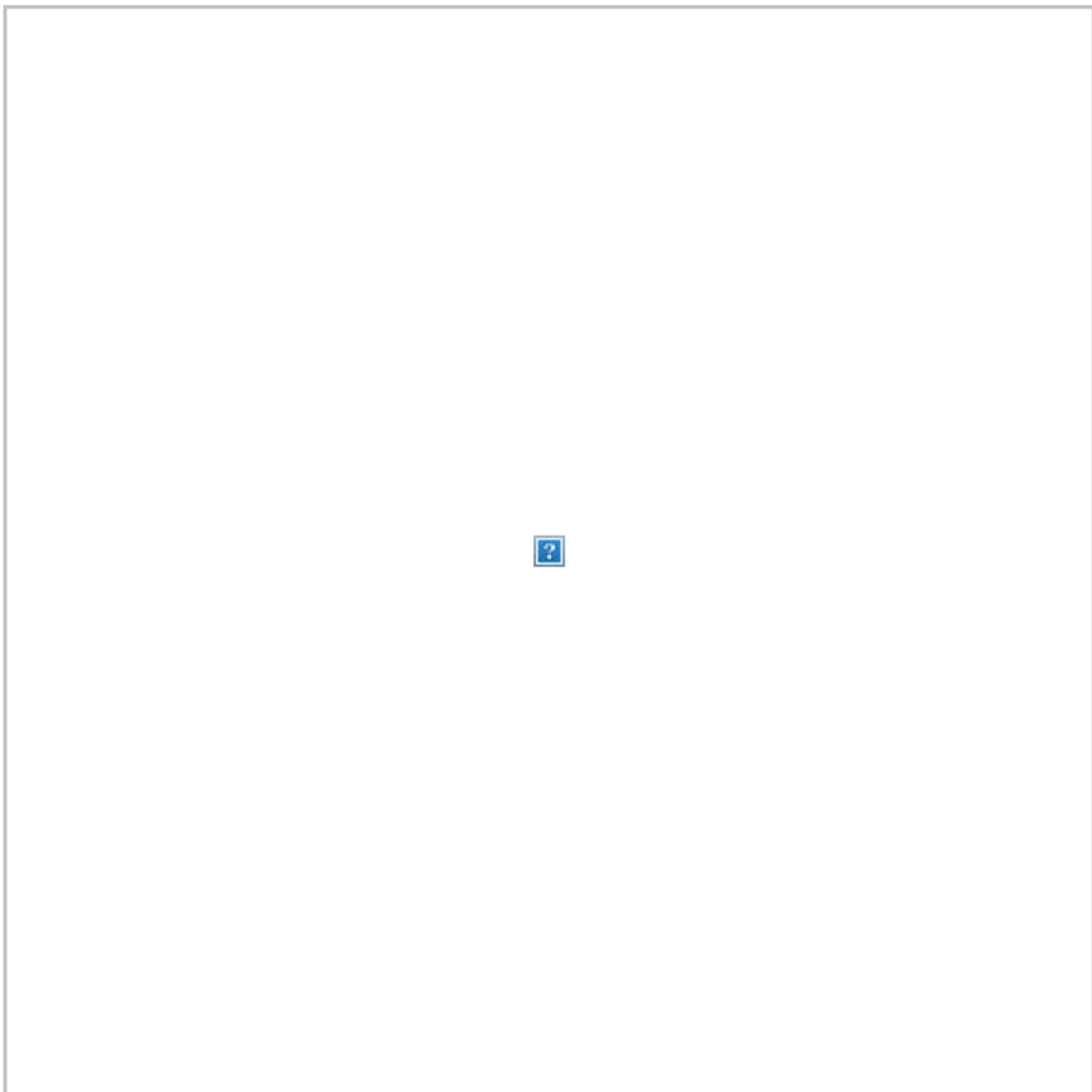
The government shutdown is pumping the brakes on Trump administration political appointments. The Office of Personnel Management isn't processing paperwork for new appointees that don't require Senate confirmation, Chris Opfer, Louis LaBrecque, and Jaclyn Diaz report today.

The slowdown comes as leadership vacancies are getting some of blame for what critics call a plodding policy pace at the Labor Department. The DOL is already without Senate-confirmed leaders at seven subagencies.

### UPS CITATIONS, SETTLEMENT GET SCRUTINY

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A set of repeat egress safety citations issued to UPS could violate a settlement agreement the company forged with OSHA back in 2009, which is still in effect, Fatima Hussein [reports](#).



A United Parcel Service Inc. driver delivers packages on Cyber Monday in New York, Nov. 30, 2015.  
Photographer: John Taggart/Bloomberg via Getty Images

Depending on how OSHA handles the UPS settlement, logistics firms could be put on notice over an issue that plagues warehousing and transportation companies. Egress citations over exits are the fourth most-cited danger in transportation and warehousing for employers with more than 250 employees, according to OSHA.

## OTHER STORIES WE'RE WATCHING

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- **Chamber of Commerce** President and CEO Thomas Donohue will deliver his annual “**State of American Business**” address this morning. Donohue is likely to renew calls to end the government shutdown and urge the Trump administration to pursue business friendly trade agreements. Tyrone Richardson will be there.

- **Contractors** with small, specialized practices are the most at risk of losing employees as the partial **government shutdown** that began Dec. 22 drags on. Contract employees with in-demand skills such as cybersecurity specialists likely will be the first to jump ship, one attorney said. Read Louis LaBrecque's [coverage](#).
- Connecticut Democratic lawmakers propose a **minimum wage increase** and the creation of a new **paid leave program**, legislation that could be promising as the Democratic Party has the governor's office, a majority in the state House, and now also controls the Senate. Read more in our "States of Work" weekly roundup of state and local labor and employment developments.
- Thousands of **federal employee union** members are expected to attend a rally in Washington today to call for an end to the partial government shutdown that has resulted in about 800,000 federal workers either working without pay or being sent home. The rally will begin at AFL-CIO headquarters, followed by a march to the White House. Louis LaBrecque is following the developments.
- Sen. Lamar Alexander (R-Ten.) yesterday was re-elected as **chairman of the Health, Education, Labor and Pensions Committee**. Alexander is known for working across the aisle, but there have been few opportunities for bipartisanship on labor and employment issues in recent years. Tyrone Richardson is following the news from Capitol Hill.

## AROUND THE WEB

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- Airbus has posted the first openings for a new **aircraft assembly** plant in Mobile, Ala., and says it plans to hire 600 new employees over the next 18 months, [AL.com reports](#).
- General Motors is moving forward with plans to stop production at its assembly plant in Oshawa, Ontario, at the end of the year despite two meetings with a Canadian trade union, [Detroit News reports](#).
- A new analysis of **Labor Department data** finds Americans 55 and over made up about half of all **employment gains** in 2018, [USA Today reports](#).
- Facebook is relocating its Boston hub and plans to hire more than 400 employees in the upcoming years, [the Boston Herald reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)





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**From:** [Employment Law360](#)  
**To:** [Ring John](#)  
**Subject:** NYC's PTO Plan Highlights Pro-Worker Push By Cities, States  
**Date:** Thursday, January 10, 2019 4:05:17 AM



## EMPLOYMENT

Thursday, January 10, 2019



### TOP NEWS

#### NYC's PTO Plan Highlights Pro-Worker Push By Cities, States

New York City's mayor said Wednesday he will pursue legislation requiring many businesses to give workers two weeks of paid time off, and California's governor may soon float a plan to give new parents six months of paid family leave — proposals that would rank among the nation's most generous for workers. [Read full article »](#)

#### Class Action Deals Shrink As Epic Systems Looms: Seyfarth

The value of the biggest employment class-action deals cratered in 2018 after hitting an all-time high in 2017, and plaintiffs' payouts will only get smaller as the U.S. Supreme Court's Epic Systems ruling ripples through the courts, according to a recent report on class action litigation trends from Seyfarth Shaw LLP. [Read full article »](#)

#### Au Pairs Secure \$65.5M Settlement In Antitrust Wage Dispute

Several sponsorship agencies for au pairs have agreed to a \$65.5 million deal in Colorado federal court that would settle allegations in a class action alleging that they colluded to suppress the child care workers' wages. [Read full article »](#)

#### Wellstar Beats Ex-Worker's Disability Bias Suit At 11th Circ.

The Eleventh Circuit on Wednesday refused to revive a former WellStar Health System Inc. worker's claims that she was wrongfully terminated and retaliated against for having disabilities and taking medical leave, finding that her employer's belief that she flouted company policy was a valid reason to fire her. [Read full article »](#)

#### Ailes' Alleged Victim Seeks \$750M For Showtime's Portrayal

A former Fox News bigwig is suing Showtime for its portrayal of her in an upcoming drama about the late CEO Roger Ailes, saying in her \$750 million suit in California state court Tuesday that despite having been his victim, the show will depict her as an Ailes collaborator. [Read full article »](#)

### DISCRIMINATION

#### Metra Workers Can't Refile Deficient Race Bias Suit: 7th Circ.

Several current and former employees of Chicago's commuter rail, Metra, can't refile their racial discrimination suit against the company after failing to fix deficiencies in multiple amended complaints, the Seventh Circuit said Wednesday. [Read full article »](#)

#### 9th Circ. Urged To Keep Injunction On 'Transgender Ban'

The Washington state attorney general on Wednesday pushed back against the Trump administration's assertion that a D.C. Circuit decision lifting a single injunction against the military "transgender ban" policy meant a separate injunction should be lifted, telling the Ninth Circuit that efforts made to overhaul the initial ban were not significant enough. [Read full article »](#)

### WAGE & HOUR

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[Gregory Doyle](#)

[Holland & Hart](#)

[Jones Day](#)

[Keller Lenkner](#)

[Kelly & Walker](#)

[Kirkland & Ellis](#)

[Labaton Sucharow](#)

## Mortgage Lender's Arbitration Agreement Stands In Wage Row

A California appellate court has reversed a lower court decision denying a retail mortgage lender's bid to force a former employee to arbitrate individual claims made in his wage-and-hour suit, finding an arbitration agreement in place was mostly up to snuff except for a section that should be severed. [Read full article »](#)

## NFL Cleared To Seek Arbitration Of Security Officials' Suit

A Manhattan federal judge told the NFL on Wednesday to go ahead and seek arbitration in a suit by security officials who say they were wrongly treated as independent contractors, rejecting the plaintiffs' contention that court-sponsored mediation should take place first. [Read full article »](#)

## Uber Wins DQ Of Opposing Attys In Unfair Competition Case

A California federal judge agreed with Uber Technologies Inc. on Wednesday that a conflict of interest involving its opponents' attorneys at Keller Lenkner LLC is grounds to boot them from a case claiming the ride-hailing company misclassifies its drivers as independent contractors to gain a competitive edge. [Read full article »](#)

## LABOR

### Two House Dems Ask NLRB To Pull Back Joint Employer Rule

Two Democratic members of the House wrote a letter to the National Labor Relations Board asking its chairman not to narrow its joint employer test under the National Labor Relations Act, saying a recent D.C. Circuit decision affirmed a broader standard. [Read full article »](#)

### NFL, Players Union Defend Drug Testing Of Panthers' Reid

The National Football League and its players union released a joint statement Wednesday defending the league's policy on performance-enhancing drugs, saying there was no impropriety in the testing of the Carolina Panthers' Eric Reid, who had claimed the league and its teams colluded against him in response to his kneeling in protest during the national anthem. [Read full article »](#)

## NONCOMPETES

### Payday Lender Nixes Noncompetes To Settle Ill. AG's Suit

Payday lender Check Into Cash's Illinois subsidiary has agreed to stop imposing highly restrictive noncompete agreements on the low-wage customer service employees at its 33 locations statewide, according to Illinois' attorney general. [Read full article »](#)

### Papa John's 'No Poach' Antitrust Suits Consolidated In Ky.

Three suits accusing Papa John's of making illegal no-poach agreements between its franchises were consolidated in a Kentucky court by a New York federal judge Wednesday. [Read full article »](#)

## WORKER SAFETY

### MetLife Can't Escape Suit Over Postal Worker's Death

A New Jersey federal judge declined to toss a suit seeking accidental-death benefits from Metropolitan Life Insurance Co. by the children of a U.S. Postal Service worker who froze to death, ruling Tuesday that the insurer based its dismissal bid on information it had refused to provide the children. [Read full article »](#)

### NFL Pulls 'Cynical' Concussion Appeal Just Before Hearing

The NFL on Wednesday withdrew an explosive appeal in the landmark concussion settlement that had outraged attorneys representing the brain-damaged players covered by the deal, just one day before it was to be discussed at a much-anticipated hearing in Pennsylvania federal court. [Read full article »](#)

Lewis Roca  
Lowey Dannenberg  
McEldrew Young  
McElroy Deutsch  
Morgan Lewis  
Nilan Johnson  
Nixon Shefrin  
Norton Rose Fulbright  
O'Melveny & Myers  
Ogletree Deakins  
Paul Weiss  
Pepper Hamilton  
Proskauer Rose  
Seeger Weiss  
Seyfarth Shaw  
Sherman & Howard  
Wheeler Trigg

## COMPANIES

Alameda Health System  
Amazon.com Inc.  
American Bar Association  
American Financial Network Inc.  
Apple Inc.  
Associated Press  
Bank of America Corp.  
Check Into Cash Inc.  
Cincinnati Bengals  
Facebook  
Fred Meyer Inc.  
Google Inc.  
Henry Schein Inc.  
Human Rights Campaign  
Humana Inc.  
Imperva Inc.  
Jimmy John's Franchise LLC  
Lambda Legal Defense & Educational Fund  
Lyft Inc.  
McDonald's Corporation  
MetLife Inc.  
NFL Enterprises LLC  
National Football League Players Association  
New York Times Co.  
Northeast Illinois Regional Commuter Railroad Corp.  
Nutrien Ltd.  
Papa John's International Inc.  
Philadelphia Eagles  
Showtime Networks Inc.  
Southeastern Pennsylvania Transportation Authority  
Southwest Airlines Co.

## PEOPLE

### Fisher Phillips Scoops Up 6-Attorney Employment Law Boutique

Fisher Phillips LLP has beefed up its presence in the Washington, D.C., region by scooping up a six-attorney firm specializing in employment defense work, a move that will add three new partners. [Read full article »](#)

## EXPERT ANALYSIS

### How Employers Can Respond To ACA Penalty Letter From IRS

An IRS Form Letter 226J payment demand signals a determination of failure to satisfy the Affordable Care Act's employer mandate. But careful examination of factors supporting the claim may reveal that the payment obligation is substantially overstated or perhaps not owed at all, says Michael Morris of Bressler Amery & Ross PC. [Read full article »](#)

### A Look Back And Ahead At Background Reports Under FCRA

Since 2017, Fair Credit Reporting Act litigation has increased by 4 percent. As this rise continues, Matthew Simpson of Fisher Phillips examines some of the familiar trends these cases follow. [Read full article »](#)

### 7 Questions To Add To Your Lateral Partner Questionnaire

Law firms should redesign the vetting process for lateral candidates so it directly addresses sexual harassment and assault issues, says Howard Rosenberg of Decipher. [Read full article »](#)

## LEGAL INDUSTRY

### Attys Targeted In Dues Phishing Scheme, ABA Warns

The American Bar Association on Wednesday warned members to be wary of fraudulent email requests for dues payments, tweeting that scammers have been sending around bogus e-bills. [Read full article »](#)

### US Firms Make Scant Progress Growing Black Atty Ranks

Little if any progress is being made by U.S. law firms to increase African-American representation, even as the percentage of women, minority and LGBT attorneys overall edged up last year, according to a Wednesday report from the National Association for Law Placement. [Read full article »](#)

### For GCs, Tech Can Separate Courtroom Winners And Losers

In-house attorneys should aggressively deploy the technology that's all but taken for granted in legal operations to map out litigation strategies, and failing to do so increasingly means losing out to savvier adversaries, according to a report released Wednesday by Crowell & Moring LLP. [Read full article »](#)

### DC Circ. Judges Bump Heads Over Shutdown Hearings

The divisive public discourse around the government shutdown crept into the D.C. Circuit on Wednesday, with a judge taking issue with his fellow panelists' decision to go ahead with a hearing in a case against the Federal Aviation Administration. [Read full article »](#)

### AG Pick Wouldn't Muddle Mueller Probe, Sen. Graham Says

President Donald Trump's choice for U.S. attorney general has no intention of meddling with Special Counsel Robert Mueller's investigation, incoming Senate Judiciary Committee Chairman Lindsey Graham told reporters Wednesday. [Read full article »](#)

### Labaton Sucharow Chairman Steps Down After 20 Years

Lawrence Sucharow, who has served as managing partner and chairman of New York-based plaintiffs firm Labaton Sucharow LLP for more than 20 years, is stepping down from his leadership role, the firm announced

Spokeo Inc.  
State Bar of California  
Suncor Energy Inc.  
The Western Union Company  
U.S. Chamber of Commerce  
Uber Technologies Inc.  
United Continental Holdings Inc.  
Verizon Communications Inc.  
Wal-Mart Stores Inc.  
WellStar Health System Inc.  
Yale University

## GOVERNMENT AGENCIES

Congressional Budget Office  
Consumer Financial Protection Bureau  
Equal Employment Opportunity Commission  
Federal Aviation Administration  
Federal Bureau of Investigation  
Federal Trade Commission  
Florida Supreme Court  
Illinois Attorney General's Office  
Internal Revenue Service  
National Labor Relations Board  
National Transportation Safety Board  
U.S. Department of Defense  
U.S. Department of Justice  
U.S. Department of Labor  
U.S. Department of Transportation  
U.S. Postal Service  
U.S. Senate  
U.S. Supreme Court  
United States Court of Appeals for the Third Circuit  
United States District Court for the Eastern District of Pennsylvania

Wednesday. [Read full article »](#)

### **Norton Rose Taps Walied Soliman As New Global Chair**

Global law firm Norton Rose Fulbright said Tuesday that Canadian chair Walied Soliman has stepped into the role of global chair and will develop the firm's cross-border mergers and acquisitions and funds practice.

[Read full article »](#)

### **Fla. Gov. Names Miami Appellate Judge To High Court**

Florida Gov. Ron DeSantis said Wednesday he is appointing Third District Court of Appeal Judge Barbara Lagoa to the Florida Supreme Court, making the onetime prosecutor and litigator with Greenberg Traurig LLP and Morgan Lewis & Bockius LLP the first Cuban-American woman to serve on the high court. [Read full article »](#)

### **Law Firm Leaders: Finnegan's Mark Sweet And James Monroe**

Mark Sweet and James Monroe are the managing partner and chair, respectively, of intellectual property law firm Finnegan Henderson Farabow Garrett & Dunner LLP. Law360 talked to them about how their firm is adapting to the changing legal industry and the challenges they face in operating a large law firm in today's legal market. [Read full article »](#)

#### **JOBS**

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Epstein Becker Green  
Los Angeles, California

##### **Career Associate (Stamford Office)**

McCarter & English, LLP  
Stamford, Connecticut

##### **Employment Associate / NY mid-size law firm**

Schoen Legal Search  
New York, New York

##### **L&E Partner -Mid-sized NYC law firm**

Schoen Legal Search  
New York City, New York

##### **Career Associate (Stamford Office)**

McCarter & English, LLP  
Stamford, Connecticut

##### **SENIOR DEPUTY GENERAL COUNSEL**

Metropolitan Water District  
Los Angeles, California

##### **Employee Benefits and Executive Compensation Attorney**

Bond, Schoeneck & King  
Syracuse, New York

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**From:** [Morning Shift](#)  
**To:** [Ring, John](#)  
**Subject:** POLITICO's Morning Shift: Trump shuts down talks — Lawyer to the border — Why aren't they striking?  
**Date:** Thursday, January 10, 2019 10:03:19 AM

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By REBECCA RAINEY ([rrainey@politico.com](mailto:rrainey@politico.com); [@RebeccaARainey](#))

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*Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).*





## QUICK FIX

President Donald Trump again threatened to declare a national emergency to fund his border wall Wednesday as Republicans remained united against Democrats efforts to reopen most of the shuttered agencies.

—**Trump will visit the southern border today**, and he's bringing along an unusual guest: legal counsel.

— **Why aren't federal workers striking during the shutdown?** Legally, they can't.

— **The shutdown could slow a robust economy** (as reflected in the January jobs report) if the shutdown stretches into next week.

**GOOD MORNING!** It's Thursday, Jan. 10, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to [rrainey@politico.com](mailto:rrainey@politico.com), [thesson@politico.com](mailto:thesson@politico.com), [ikullgren@politico.com](mailto:ikullgren@politico.com) and [tnoah@politico.com](mailto:tnoah@politico.com). Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

## DRIVING THE DAY

**TRUMP QUILTS TALKS:** The third bipartisan meeting this week between the White House and lawmakers was a "total waste of time," according to the president, who stormed out after Democrats once again denied him funding for the border wall, POLITICO's Burgess Everett, Heather Caygle, and John Bresnahan report. The president told GOP senators Wednesday that he possesses the authority to declare a national emergency but prefers not to. "Trump also said he believes federal unions will put more pressure on Democrats to come to the table, though those unions have largely backed Democratic leaders' position." More on that [here](#).

**Over on the Hill**, the House GOP caucus was (after some White House arm-twisting) holding firm against the Democrats' attempts to reopen most of the shuttered agencies, POLITICO's Bresnahan and Sarah Ferris write. More from POLITICO [here](#).

**More shutdown coverage:**

—"Federal shutdown threatens programs for sexual assault victims," from

## [POLITICO](#)

— "NTSB investigators largely furloughed, halting accident work," from [POLITICO](#)

### AT THE BORDER

**LAWYER TO THE BORDER:** President Donald Trump will bring White House Counsel Pat Cipollone to the U.S.-Mexico border today to firm up his legal argument for declaring a national emergency, POLITICO's Nancy Cook and Gabby Orr report. Cipollone "is at the center of the administration's internal debate over whether and how Trump can unilaterally direct billions of dollars in funding to the project," they write. A Republican close to the White House says that if Trump can get a briefing during his visit that adds to the sense of crisis "then it can be part of that legal and policy record the administration will end up using in court."

**Trump said Wednesday** that he has an "absolute right" to declare a national emergency, POLITICO's Matthew Choi reports, stating that "my threshold will be if I can't make a deal with people that are unreasonable." (Morning Shift has a feeling that if Trump goes ahead and declares a national emergency, that breezy assertion will be quoted in any legal challenge.) More on Trump's comments [here](#) and more from POLITICO's Cook and Orr [here](#).

**WHY AREN'T THEY STRIKING?:** With some 800,000 federal workers not getting their paychecks tomorrow, you may be wondering why federal unions aren't threatening a strike. The answer is, they can't. The 1947 [Taft-Hartley Act](#) made it illegal for federal employees to strike, and in 1955 Congress made it punishable by fines or a one-year jail term. "That law was intended to prevent public-sector workers from leveraging a work stoppage that could cripple the U.S. government or major industries in negotiations," Russell Berman explains in the Atlantic. If federal workers who are required to work for no pay don't show up, they could face disciplinary action or termination, Berman reports.

**In 1981 President Ronald Reagan** fired more than 11,000 striking air traffic controllers who ignored his order to return to work within 48 hours, and federal judges levied fines of \$1 million a day against their union, the Professional Air Traffic Controllers Organization. (Fun fact: PATCO had endorsed Reagan in the 1980 election. It did not survive the 1981 showdown.)

**"We might picket," a union source** told Morning Shift. "We do occasionally have information picketing, such as informational rallies." Hundreds of workers along



with AFL-CIO President Richard Trumka and members of Congress, will gather outside the federation's Washington D.C. headquarters today at noon to demand an "immediate resolution" to the shutdown. Workers will then march to the White House. More on the air traffic controllers' strike [here](#) and more from the Atlantic [here](#).

## **JOBS REPORT**

**JOBS REPORT IN JEOPARDY?:** Drew DeSilver reports for the Pew Research Center that the Bureau of Labor Statistics may face some difficulties in collecting January jobs data. The agency relies on the (currently shuttered) Census Bureau to perform the Current Population Survey, on which the unemployment rate is based, and "the Census Bureau has ceased most operations, other than planning for the 2020 count," DeSilver explains. Moreover, the jobs numbers could be a lot weaker in January if the shutdown drags into next week, when BLS conducts its payroll survey, POLITICO's Victoria Guida reports. That's because most of the furloughed workers will be counted as unemployed. A department spokesperson, however, told Morning Shift that the January BLS numbers will not be impacted by the current partial shutdown. More from Guida [here](#) and more from Pew [here](#).

**ROLLBACK OF HARASSMENT PROTECTIONS APPEALED:** The City of Seattle and UNITE HERE will jointly appeal a Washington appellate court's move to overturn the city's sexual harassment protections for hotel workers, the union announced Wednesday. The ballot measure that required workers to be given panic buttons and that required hotels to keep a record of guests who've been accused of harassing hotel workers passed in 2016 with 77 percent of the vote. The state appeals court struck down the law in December because it violated a rule that ballot measures cover only one subject, according to [The Seattle Times](#).

## **UNIONS**

**TEACHERS STRIKE PUSHED TO MONDAY:** The United Teachers Los Angeles said Wednesday that the teachers union would push back its strike of more than 30,000 members to Monday, POLITICO's Kimberly Hefling and Benjamin Wermund [report](#). "Union leaders said the decision was made because of uncertainty over how a legal dispute concerning whether the union gave enough notice to strike ... would be resolved."

**A walkout in the nation's second-largest school district** would be LA's first

since 1989, Hefling writes, and the unrest is being watched closely "to see if it is a harbinger of similar teacher labor action in the rest of the state or the nation." More from POLITICO [here](#).

**BOOKER CALLS ON ADMIN TO RETRACT 'DECEPTIVE' REPORT:** Sen. Cory Booker urged the Departments of Homeland Security and Justice to correct or retract a controversial January 2018 report on Wednesday that suggested a link between immigration and crime in the U.S. The Justice Department acknowledged that the report, which drew legal challenges from watchdog groups, contained errors, but refused twice to retract it, Ellen Nakashima reported last week for in Washington Post. In a letter to DHS and DOJ, Booker pointed to the report's claim that between 2003 and 2009 immigrants were convicted of 69,929 sex offenses, "when it reality, that figure represents the time period between 1955 and 2010." Read the letter [here](#) and more on the report from the Post [here](#).

**\$65 MILLION AU PAIR SETTLEMENT:** More than a dozen companies that sponsor au pairs or live-in foreign child care assistants settled a class-action lawsuit Wednesday for \$65.5 million, POLITICO's Ian Kullgren reports. "The lawsuit, filed in 2014, alleged that 15 companies took advantage of the State Department's au pair cultural exchange program as a pipeline for cheap child care, peddling false promises of cultural enrichment while colluding behind the scenes to fix an hourly rate of \$4.35." More for Pros [here](#).

## COFFEE BREAK

— "Safety experts sound alarm on addiction-related workplace deaths," from [Business Insurance](#)

"John Lasseter, Ousted From Pixar in #MeToo Wave, Finds New Hollywood Home," from [The New York Times](#)

— "Nearly three-quarters of executives pick proteges who look just like them," from [The Washington Post](#)

— "[When Is a Border Just a Border? Almost Never](#)," from The New York Times

— "Ice Might Be Violating Federal Law By Keeping Immigrants Detained During The Shutdown" from [BuzzFeed](#)

**THAT'S ALL FOR MORNING SHIFT!**

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## GovExec Breaking News

January 10, 2019



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### [Senate Passes Back Pay Bill for Furloughed Feds, Trump Says He Will Sign It](#) // Tom Shoop

The Senate voted unanimously Thursday evening to provide back pay to federal employees furloughed as a result of the ongoing partial government shutdown, and President Trump indicated he would sign it.

[Read full article »](#)

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Bloomberg Law



## DAILY LABOR REPORT®

### Highlights

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#### TOP STORIES

##### [NBCUniversal Secures Arbitration of Discrimination Dispute](#)

By Brian Flood

NBCUniversal Media can force an employment discrimination case into arbitration, the U.S. Court of Appeals for the Ninth Circuit said Jan. 10 in an unpublished ruling.

##### [Costs and Bias Cases Pile Up During EEOC Shutdown](#)

By Paige Smith

A lapse in federal funding is snarling the Equal Employment Opportunity Commission's workplace discrimination litigation, and the side effects of court delays and scrambling personnel could linger long after the government reopens.

##### [SCOTUS to Weigh if State Wage Laws Apply on Offshore Rigs](#)

By Jon Steingart

The U.S. Supreme Court will consider whether federal or state wage law applies on offshore drilling rigs, the court announced Jan. 11.

## [With No One to Do Paperwork, Top Hires Stall at U.S. Agencies](#)

By Chris Opfer, Louis C. LaBrecque and Jaclyn Diaz

The Trump administration can't fill a growing list of vacancies in key political-appointment posts because there's no one to process the paperwork during the partial government shutdown.

## **DISCRIMINATION**

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### [United Airlines Beats Appeal in Suit Over Drug Test Firing](#)

By Julie Steinberg

United Airlines Inc. defeated an appeal in a discrimination suit by an employee who said he suffered from an attention disorder and was fired after he failed a drug test.

### [Black U.S. Gestamp Worker Accuses Company of 'Colorism' Bias](#)

By Patrick Dorrian

Gestamp N.A. Inc. is accused in a new lawsuit of denying promotion of a black human resources employee at its McCalla, Ala., facility because she is lighter skinned than the HR director who made the decision.

### [White Welder Can't Show Bias in Discharge for Using 'N Word'](#)

By Patrick Dorrian

A white "lead person" in MTD Consumer Group Inc.'s Verona, Miss., weld shop can't show race-based disparate treatment in the company's handling of alleged workplace racial remarks, a federal appeals court ruled.

## **WAGE & HOUR**

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### [Back Pay for Furloughed Federal Workers Approved, Sent to Trump](#)

By Tyrone Richardson

Congress Jan. 11 advanced legislation that would provide back pay when the government shutdown ends for federal workers currently on furlough or on the job without pay.

### [Why Are Some Airport Screeners Getting Paid? They're Contractors](#)

By Joyce E. Cutler

Airport security screeners in Oakland and San Jose aren't getting paid during the government shutdown. Screeners at the San Francisco airport are.

### [Calif. Restaurant Chain Liquidated for \\$1.7M Back Pay Award](#)

By Joyce E. Cutler

The Alameda County District Attorney is liquidating assets of a defunct restaurant chain to cover \$1.7 million in unpaid wages and fines to immigrant workers stiffed by their now former employer.

### [\\$5.9 Million Awarded to Misclassified Calif. Port Drivers \(2\)](#)

By Andrew Wallender

Two companies that wrongly classified 24 California port truck drivers as independent contractors must pay the workers \$5.9 million, the state's labor regulator ruled.

### [Tampa Restaurants Served Up \\$1M in Back Wages in 2018, DOL Says](#)

By Chris Marr

Restaurants in the Tampa, Fla., area had to pay their workers more than \$1 million to settle overtime, minimum wage, and other pay violations in fiscal year 2018, the U.S. Department of Labor said.

## **HARASSMENT & RETALIATION**

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### [Google Board Sued for Hushing Misconduct Claims About Rubin \(1\)](#)



By Mark Bergen, Joel Rosenblatt and Kartikay Mehrotra

Alphabet Inc.'s board of directors was sued by a shareholder for "quietly" approving a \$90 million exit payment to the father of Android, Andy Rubin, and protecting other executives accused of sexual harassment.

## [Texas House Bolsters Sexual Harassment Investigative Powers](#)

By Paul Stinson

Texas lawmakers in the state House are launching into the 2019 session with a strengthened ability to investigate sexual harassment allegations against members or staffers.

## **SUPREME COURT**

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### [Justices to Take Look at Job Bias Law's Pre-Suit Rule](#)

By Patrick Dorrian

The U.S. Supreme Court has agreed to consider whether Title VII of the 1964 Civil Rights Act's pre-lawsuit administrative process is an essential jurisdictional hurdle a worker must clear before suing for alleged job bias.

## **HUMAN RESOURCES**

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### [HR Buzz: Workers Want Meaning • Giving EAPs Some Love](#)

By Cathleen O'Connor Schoultz

A surprising number of workers say they'd rather sit in traffic than deal with that broken down printer at work. It's part of a larger feeling among many workers that meaningful work is becoming more, well, meaningful. Those are just some of the findings in this week's "HR Buzz" on the latest workplace trends, surveys, and reports.

## **HEALTH CARE & BENEFITS**

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### [Washington University Workers Want Retirement Plan Suit Revived](#)



By Jacklyn Wille

Employees of Washington University in St. Louis asked a federal appeals court to revive their challenge to the school's retirement plan based on U.S. Supreme Court precedent recognizing a fiduciary's duty to monitor investments.

## **SAFETY & HEALTH**

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### [Blast That Killed Wis. Firefighter Leads to Contractor Fines](#)

By Michael J. Bologna

The Occupational Safety and Health Administration proposed a fine of \$26,000 against two utility contractors for their roles in an excavation accident that resulted in the death of a Wisconsin fire department captain.

## **ALSO IN THE NEWS**

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### [Dump 'Joint Employer' Proposal, Democratic State AGs tell NLRB](#)

By Robert Iafolla

Attorneys general from several Democratic states want the National Labor Relations Board to scrap its plan to narrow the legal test for “joint employment” under federal labor law.

### [Furloughed Workers' Leave Accruals Ending](#)

By Louis C. LaBrecque

Full-time federal employees who've been told not to work because of the partial government shutdown that began Dec. 22 won't accrue annual and sick leave after they've been in “a nonpay status” for 80 hours, or two 40-hour work weeks.

### [U.S. Regulators Urge Lenders to Help Workers Hit by Shutdown \(1\)](#)

By Christopher Condon

The Federal Reserve and other government regulators have encouraged

financial institutions to offer relief to consumers impacted by the partial U.S. government shutdown.

### [Former Hospital Employees Are a Hidden Health Privacy Risk](#)

By James Swann

Former hospital employees are a hidden threat to patients' privacy, as they frequently walk away from their workplaces with the logins and passwords that access hospital electronic health record systems.

### [Trump Official Asks Staff to Help Workers Affected by Shutdown](#)

By Josh Eidelson

Some federal government employees who are still getting paychecks are being solicited to chip in for those who aren't.

### [Walmart Plans to Add 2,000 Staffers in Technology Group in 2019](#)

By Emma Chandra and Matthew Boyle

Walmart Inc. plans to hire 2,000 technology experts this year to support its efforts both in stores and online, boosting the group's ranks by more than a fourth.

### [Trump Can't Be Sued Anonymously by Workers Over Shutdown \(1\)](#)

By Bernie Pazanowski and Andrew Wallender

Federal employees who are being forced to work without pay during the government shutdown can't use pseudonyms to sue the president, the U.S. District Court for the District of Columbia said Jan. 10.

### [Boards Rely on Intense Vetting for New Leaders After #MeToo](#)

By Paige Smith

Sexual harassment allegations have incinerated many enterprise companies since the #MeToo movement gained prominence in October 2017, and companies are learning that traditional succession plans need a facelift.

## [Deutsche Bank Said to Outsource Jacksonville Jobs to Mumbai \(1\)](#)

By Lily Katz and Anto Antony

Deutsche Bank AG was at the forefront as Wall Street began “nearshoring” staff to cheaper cities across the U.S. Now, the German lender is moving some of those jobs to India.

### **LATEST CASES**

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#### [Case: Wage & Hour/Overtime \(Fed. Cl.\)](#)

Canine handlers for U.S. Customs and Border Protection may not recover more than the \$35,000 overtime cap set out by appropriations acts in the settlement of their federal unpaid overtime claim, because the acts explicitly state that the cap applies to all statutes that guarantee CBP employees overtime pay, which shows that Congress intended to effectively amend the federal overtime law in regard to those employees. The case is *Bailey v. United States*, 2019 BL 8976, Fed. Cl., 15-995C, 1/10/19.

#### [Case: Discrimination/Promotion \(N.D. Ill.\)](#)

A black member of Chicago's Department of Water Management didn't go to trial on his claim that he was passed over for several promotions because of race discrimination. He showed that he was qualified, but hiring managers determined that he wasn't ready to hold a chief position based on short vague answers and his response about how to handle an injured employee, and although he pointed to ongoing investigations into the Water Department's alleged culture of discrimination, he failed to show evidence specific to his case showing that race was the real reason he was denied the promotion, the court said. The case is *Outley v. City of Chicago*, 2019 BL 9954, N.D. Ill., 13 C 1583, 1/11/19.

#### [Case: Wage & Hour/Counterclaims \(E.D. La.\)](#)

A Louisiana restaurant can't bring a counterclaim against a group of its servers—who claim that it made improper tip deductions—based on the servers' alleged failure to report cash tips, because the counterclaim doesn't seek a

set-off for damages, and the restaurant didn't establish that the payments it says it made to servers when their reported tips fell below minimum wage were pre-paid wages. The case is *Henderson v. Dat Dog Enters., LLC*, 2019 BL 9218, E.D. La., 17-17654 SECTION: J(5), 1/10/19.

#### [Case: Discrimination/Discharge \(5th Cir.\)](#)

A white "team lead" employed by MTD Consumer Group, Inc. in Mississippi who was fired for using the N-word wasn't entitled to a trial on his reverse racial discrimination claim, even though a black employee who said that there were "no good white men" wasn't disciplined. Two investigations involving interviews of multiple employees of different races confirmed that he had used the racial slur, the white team lead's epithet was considerably more offensive than the black employee's statement, and the two employees were not comparable because they had different supervisors and the white employee held a leadership position. The case is *Vess v. MTD Consumer Grp., Inc.*, 2019 BL 8466, 5th Cir., 18-60154, unpublished 1/10/19.

#### [Case: Individual Employment Rights/Government Employees \(D.D.C.\)](#)

A government employee entitled to reinstatement after she was demoted from the Senior Executive Service due to sex discrimination disputes that a position that the U.S. Secretary of Agriculture assigned her to is comparable to the job she was demoted from in 2000. Her present position as a Deputy Director for Civil Rights Operations is roughly equivalent to her former post in pay, benefits, status and responsibility, a federal court said. The reinstated employee is effectively at the same level as before, reporting to an administrator that oversees the agency's civil rights function, she is responsible for overseeing and coordinating the civil rights function of over 250 employees across the agency, planning civil rights training, and is a member of an agency civil rights leadership team. The case is *Banks v. Perdue*, 2019 BL 6695, D.D.C., No. 07-cv-01807 (APM), 1/9/19.

#### [Case: Individual Employment Rights/Contracts \(D.P.R.\)](#)

Hospital Episcopal San Lucas Ponce of Puerto Rico won't have to reinstate a doctor in training to an emergency medicine residency program, after he was dismissed from the program for saying that if the chief resident who supervised

him had been a man he would have "punched her in the face" for interrupting him during a patient presentation to colleagues and saying he was presenting the patient incorrectly. The resident claimed that he didn't have proper notice of his dismissal from the program because the physicians that participated in the process that led to his suspension didn't follow the procedure outlined in a resident manual. However, the resident's contract with the Puerto Rico Department of Health stated that he could be dismissed if he incurred improper conduct such as harassing behavior, and his threatening comments toward his supervisor were reprehensible, the court said. The case is *Álvarez v. Hosp. Episcopal San Lucas, Inc.*, 2019 BL 9001, D.P.R., 15-2413 (PAD), 1/10/19.

#### [Case: Discrimination/Retaliation \(11th Cir.\)](#)

A black female Wells Fargo employee was properly denied a trial on her claim that the bank accelerated her date of resignation from 14 days to three days to retaliate for her complaint that her supervisors had harassed her because of her race and gender. Wells Fargo showed that her performance issues motivated its actions as she had three sequential cash drawer shortages, was being monitored for taking excessive breaks and a prior cash drawer discrepancy, and had been given performance warnings in the past, the court said. The case is *Mathews v. Wells Fargo*, 11th Cir., 18-11119 Non-Argument Calendar, unpublished 1/11/19.

#### [Case: Wage & Hour/Joint Employers \(D. Ariz.\)](#)

An Arizona care worker, who provided services to his disabled partner and received compensation through a state health care agency program, wasn't jointly employed by his partner and an organization that administered the program, because, among other factors, his partner's agreement with the organization stated that only she was responsible for directing his work schedule, training, and other employee management duties. The case is *Abel v. Bridgeway Advantage Sols. Inc.*, 2019 BL 9274, D. Ariz., CV-17-01248-PHX-GMS, 1/10/19.

#### [Case: FMLA/Retaliation \(S.D. N.Y.\)](#)

A sales executive may proceed with her claim that a publishing company in New York fired her in retaliation for notifying the company of her intent to take



leave under the Family and Medical Leave Act surrounding her pregnancy, rather than because of a reduction-in-force. Her assertions, including that her responsibilities were assumed by a non-pregnant employee and that she was fired shortly after disclosing her intent to take FMLA leave, could show that her intent was a factor in the layoff decision, the court said. The case is *Saraf v. West Publ'g Corp.*, 2018 BL 485817, S.D.N.Y., No. 16-CV-1425 (VSB), 12/20/18.

#### [Case: Discrimination/Tenure \(E.D. Ark.\)](#)

A female instructor at the University of Arkansas at Pine Bluff didn't show that she was twice denied tenure because of sex discrimination while employed as an assistant professor of music courses, a court said. Although her own department gave her positive reviews, the court said that a university-wide tenure committee made an unbiased decision to recommend denial, because the instructor displayed a lack of scholarship after joining the university, and her additional scholarship following her first denial of tenure was minimal. The case is *Young v. Univ. of Ark. Sys.*, E.D. Ark., 4:17CV00858 JLH, 1/10/19.

#### [Case: Disability Discrimination/Association Discrimination \(M.D. Fla.\)](#)

A New Port Richey, Florida, city employee may go ahead with his claim that he was fired due to his association with his disabled wife, given that he says that he was excused from essential-person duty during Hurricane Irma to care for his wife and was then fired without the usual disciplinary hearing for failing to report to work. The case is *Boyce v. City of New Port Richey*, M.D. Fla., 8:18-cv-2661-T-33TGW, 1/10/19.

#### [Case: Discrimination/Retaliation \(5th Cir.\)](#)

A former deputy in St. John the Baptist Parish in Louisiana didn't show that he was retaliated against for filing an EEOC complaint when a chief law enforcement officer didn't reinstate him after he resigned. The deputy's attorneys sent the officer a settlement letter recommending that he be reinstated to a sergeant's rank, but he never actually applied for a position in the Sheriff's Office, and although he pointed to the officer's testimony that he had hired new officers through fliers, career days, and word of mouth, the court said that the deputy didn't provide evidence that the Sheriff's Office hires

employees without an application process. The case is *Thomas v. Tregre*, 5th Cir., 18-30577, 1/10/19.

#### [Case: Disability Discrimination/Discharge \(9th Cir.\)](#)

A United Airlines employee's disability bias claims after he was fired for failing a drug test were properly dismissed, because his challenge to the accuracy of the test results doesn't show that his perceived violation of company policy wasn't the real reason he was fired. The case is *Fragada v. United Airlines, Inc.*, 2019 BL 8938, 9th Cir., 17-55900, unpublished 1/10/19.

#### [Case: FMLA/Retaliation](#)

An assistant principal may proceed with her claim that Harrison School District Two in Colorado didn't renew her contract in retaliation for taking leave under the Family and Medical Leave Act, rather than for failure to successfully complete her work responsibilities or perform her duties outlined in a work improvement plan. Her assertions, including that the district recommended not renewing her contract before the work improvement plan was completed, could show that its reasons for the non-renewal decision are pretextual. The case is *Hartman v. Harrison Sch. Dist. Two*, 2019 BL 6891, D. Colo., No. 17-cv-01133-PAB-SKC, 1/9/19.



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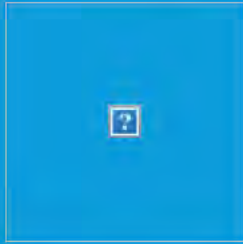
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What you need to know to start your day.

## Succession Plans Get #MeToo Revamp • Supreme Court Watch



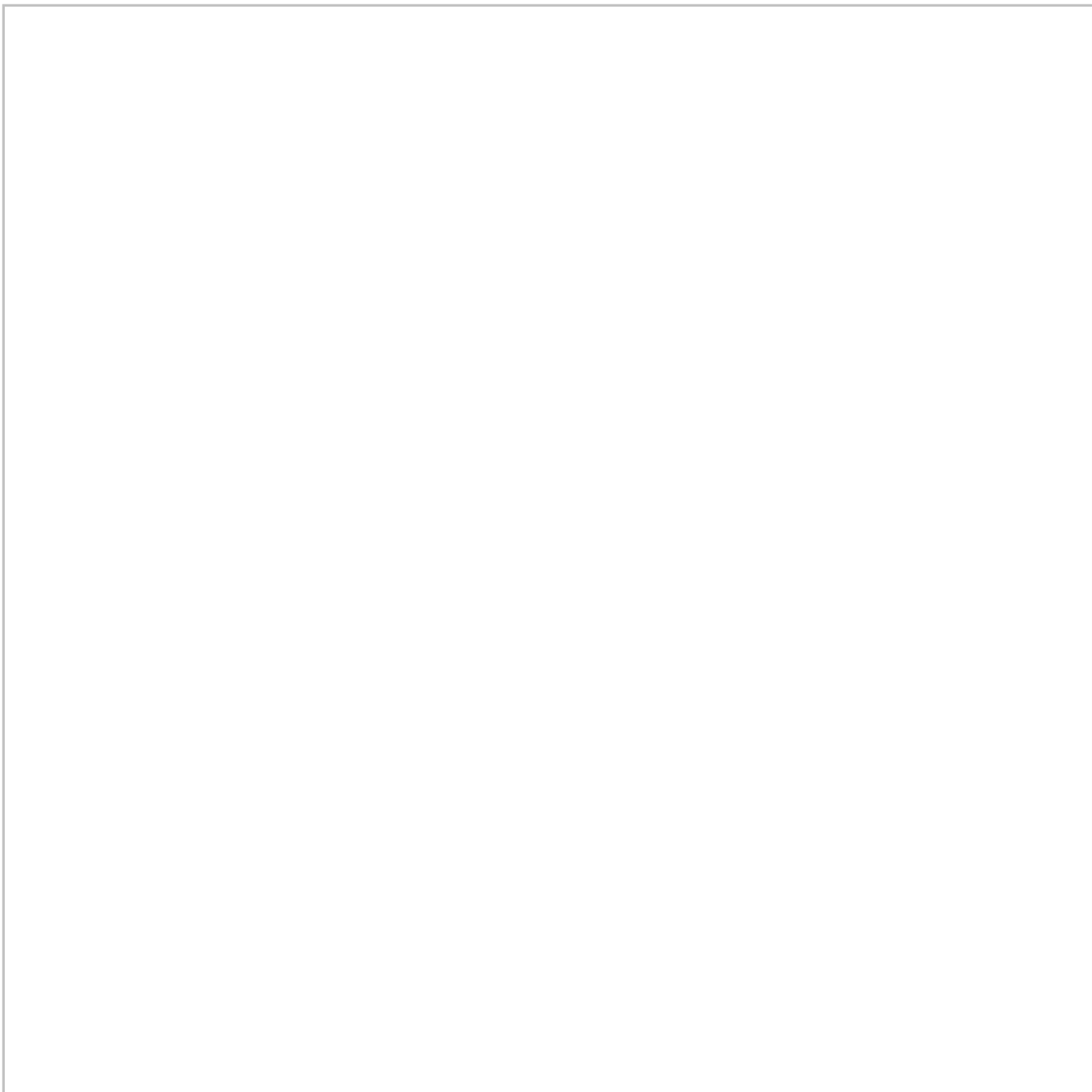
By [Patricio Chile](#)

### VETTING INTENSIFIES AFTER #METOO

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Sexual harassment allegations have troubled many enterprise companies since the #MeToo movement gained momentum in 2017, and companies are learning that traditional succession plans need a facelift, Paige Smith [reports](#).





Protesters during a #MeToo march in Hollywood, Calif., Nov. 12, 2017.  
MARK RALSTON/AFP/Getty Images

Succession plans have always been a consideration for board members and top executives, but the urgency of the #MeToo movement has pushed the conversation to the forefront.

## **WILL HIGH COURT HEAR LGBT CASES?**

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LGBT bias protections, the use of salary history in setting employees' pay, and wages for offshore oil rig workers are among the employment law issues the U.S. Supreme Court justices will consider again at their private conference today.

If the high court decides to take up any of those cases, an order could come as early as this afternoon. If not, denials of appeals considered at the conference

will be issued Monday at 9:30 a.m.

## OTHER STORIES WE'RE WATCHING

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- Monday is the deadline to weigh in with public comments on the **NLRB's proposed joint employer rule**. The board hasn't said how a federal appeals court's recent surprise decision in the *Browning-Ferris* case will impact the proposal.
- The U.S. **Department of Labor** announced that its Wage and Hour Division in Tampa, Fla., conducted **350 restaurant-industry investigations** for fiscal year 2018, resulting in more than \$1 million in back pay and damages, [Chris Marr reports](#).
- Rallies by federal employee union members are expected to continue today, following an [AFL-CIO event](#) in Washington on Jan. 10. **Union workers** will gather in Boston's Post Office Square and at Seattle-Tacoma International Airport today. **Additional rallies are planned** in the coming days in other cities, including Philadelphia, Denver, New York, and the border town of McAllen, Texas, where President Donald Trump visited Jan. 10 to push for border security.
- A surprising number of workers say they'd rather sit in traffic than deal with that broken down printer at work. That's just one of the findings in [this week's "HR Buzz"](#) on the latest **workplace trends**, surveys, and reports.

## AROUND THE WEB

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- **Georgia-Pacific** announced the company is leaving the paper business, effectively laying off more than 600 workers at its plant in Port Hudson, La., [WAFB 9 reports](#).
- Ford said it will cut thousands of jobs across Europe, as part of a turnaround effort, [CNBC reports](#).
- An **artificial intelligence** expert said 40 percent of the world's jobs could be done by machines in as soon as 15 years, [Fox News reports](#).
- **Internal Revenue Service** employees and others involved with the National Treasury Employees Union participated in rallies across the country in protest of the partial federal **government shutdown**, which is now approaching the end of its third week, [Fox 13 reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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## GovExec Breaking News

January 11, 2019



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### [Furloughed Feds Poised to Receive Back Pay After House Sends Measure to Trump](#) // Eric Katz

About 350,000 federal employees currently on furlough are all but assured to receive back pay, with the House on Friday sending a measure to President Trump's desk to guarantee retroactive compensation once the partial government shutdown ends. Trump has indicated to lawmakers he will sign the legislation.

[Read full article »](#)

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Friday, January 11, 2019

### Why Federal Workers Still Have to Show Up Even If They're Not Being Paid

The law prohibits public employees from striking, forcing them into what one union leader called "involuntary servitude" during the government shutdown.

### Succession Plans Get #MeToo Revamp • Supreme Court Watch

**BloombergLaw - Daily Labor Report** 11 Jan 2019 07:06

By Patricio Chile Vetting Intensifies After #MeToo Sexual harassment allegations have troubled many enterprise companies since the #MeToo movement gained momentum in 2017, and companies are learning that traditional succession plans need a facelift...

### The New Museum's Staff Is Pushing to Unionize—and Top Leadership Is Not at All Happy About It The museum has hired the union-busting firm Adams Nash Haskell & Sheridan.

**artnet.com** 10 Jan 2019 19:12

The staff of the New Museum has initiated a push to join a union. Last Friday, employees sent a letter to the National Labor Relations board, stating their intent to affiliate with Local 2110, the same union that represents workers at New York's Museum...

### Blog Post: NLRB Had Right To Fire Atty Who Lost Affidavits, Judge Says

**LexisNexis Legal Newsroom : Workers Compensation Law (Blog)** 10 Jan 2019 15:14

An Alabama federal judge on Thursday upheld an administrative ruling that the National Labor Relations Board acted within bounds when it fired a field attorney for losing confidential witness statements and misleading an agency official who investigated...

### Case: Labor Relations/Settlements (6th Cir.)

**BloombergLaw - Daily Labor Report** 10 Jan 2019 11:16

The NLRB's application for summary enforcement of its default judgment against D2 Abatement, Inc. and its alter ego Premier Environmental Solutions, LLC, is granted. The NLRB had determined that D2 failed to comply with the terms of its settlement...



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## EMPLOYMENT

Friday, January 11, 2019



### TOP NEWS

#### Ogletree Arbitration Pact Covers Bias Accuser, Judge Says

A proposed class action accusing Ogletree Deakins Nash Smoak & Stewart PC of bias against women could be headed to arbitration after a California federal judge said Wednesday the firm's arbitration agreement covers attorney Dawn Knepper even though she didn't sign it. [Read full article »](#)

#### LA Teacher Strike OK'd After Judge Says Proper Notice Given

Tens of thousands of teachers in Los Angeles County on Thursday won approval to strike next week after a California state judge rejected the L.A. Unified School District's bid to block the union action, finding the union gave 10 days' notice as legally required by the collective bargaining agreement. [Read full article »](#)

#### NJ County Prosecutor Hit With Suit Over 'Toxic' Gender Bias

A New Jersey county prosecutor was slammed with a lawsuit Thursday alleging that he and his male colleagues created a "toxic" workplace culture that resulted in discrimination against women, particularly those who raised concerns about equal pay, cronyism, nepotism and his own purportedly illegal conduct. [Read full article »](#)

#### NLRB Had Right To Fire Atty Who Lost Affidavits, Judge Says

An Alabama federal judge on Thursday upheld an administrative ruling that the National Labor Relations Board acted within bounds when it fired a field attorney for losing confidential witness statements and misleading an agency official who investigated the incident, saying the board's action was reasonable. [Read full article »](#)

#### Feature

#### What All Attorneys Need To Know About The Shutdown

As the government shutdown drags on, Law360 is compiling answers to some of the most pressing questions on attorneys' minds. [Read full article »](#)

### DISCRIMINATION

#### NJ Gov. Aide Grilled Over Handling Of Sex Assault Claim

New Jersey legislators grilled the chief of staff to Gov. Phil Murphy on Thursday about how a former staffer accused of rape remained in his position for months after being told to step down and then later resigned amid media inquiries about the alleged assault. [Read full article »](#)

#### Investors Sue Google Parent Execs Over Privacy, Harassment

A proposed class of shareholders accused Google parent Alphabet's board of directors in California state court Wednesday of concealing data privacy issues and issues of sexual harassment and discrimination, ultimately propping up the stock price until the truth about these issues emerged. [Read full article »](#)

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## GrubHub Fights Ex-Driver's Bid To Undo Contractor Ruling

GrubHub told the Ninth Circuit on Wednesday that the California Supreme Court's Dynamex ruling establishing a new worker classification standard doesn't disturb a federal judge's finding that an ex-driver was an independent contractor and not an employee in a proposed class action over unpaid wages and overtime. [Read full article »](#)

## LABOR

### High Court Asked To Decide If Labor Law Applies To Tribes

A California tribal casino has asked the U.S. Supreme Court to review a ruling that it can't block workers from handing out union leaflets in guest areas, saying the Ninth Circuit's application of the Chevron doctrine furthered a circuit split regarding whether the National Labor Relations Act applies to tribes. [Read full article »](#)

### Discovery Bid Denied In Eagles Player's Suit Against Union

Philadelphia Eagles lineman Lane Johnson can't investigate his union, the NFL Players Association, over claims that it retaliated against him for criticizing its tepid response to Johnson's 10-game suspension for banned-substances use, a New York federal court said Wednesday.

[Read full article »](#)

## NONCOMPETES

### 6th Circ. Backs Staffing Co.'s Attys' Fees In Noncompete Row

A Sixth Circuit panel on Thursday backed a lower court's decision awarding attorneys' fees to Kelly Services Inc. in a suit against three former employees the staffing and consulting company accused of breaching their noncompete agreements when they went to work for a competitor. [Read full article »](#)

## EXPERT ANALYSIS

### Navigating DHS' Uncertain H-1B Overhaul

Although the U.S. Department of Homeland Security's recently proposed changes to the H-1B visa lottery are intended to make the process quicker and easier, they appear unlikely to be finalized before the next H-1B cap application period begins, says Matthew Kolodziej of Jia Law Group.

[Read full article »](#)

### Trends Suggest Cartel Enforcers Face Headwinds In 2019

Judged purely by enforcement statistics, 2018 was a down year for cartel enforcement. But authorities are training their sights on new sectors, theories and targets, and considering additional ways to further sharpen their enforcement stick and sweeten the leniency pot, say John Terzaken and Elizabeth French of Simpson Thacher & Bartlett LLP. [Read full article »](#)

## Opinion

### The Case For Lawyer-Directed Litigation Funding In NY: Part 1

Contrary to what the New York City Bar Association concluded in an ethics opinion last year, lawyer-directed nonrecourse commercial litigation funding does not violate New York rules on sharing fees with nonlawyers, say Peter Jarvis and Trisha Thompson of Holland & Knight LLP. [Read full article »](#)

## LEGAL INDUSTRY

## Feature

### Revolving Door Leads Ex-Lawmakers To Leaner Job Market

BigLaw lobbying shops and boutique firms alike have already started snapping up some of the dozens of former Congress members who found themselves without a job this month, but experts say the sheer amount of turnover this year will make it a lean market for the ex-lawmakers.

[Read full article »](#)

Mayer Brown  
McKool Smith  
Miller Law Offices  
Ogletree Deakins  
Parker McCay  
Paul Hastings  
Proskauer Rose  
Sandler Reiff  
Sanford Heisler Sharp  
Scott + Scott  
Seyfarth Shaw  
Sidley Austin  
Simmons Hanly  
Simpson Thacher  
Strobl & Sharp  
Wiley Rein  
Williams & Connolly  
WilmerHale  
Winston & Strawn  
Wood LLP  
Zashin & Rich

## COMPANIES

Amazon.com Inc.  
American Civil Liberties Union  
Apple Inc.  
Casino Pauma  
Chevron Corp.  
Dallas Cowboys  
Dynamex, Inc.  
Federal Bar Association  
Goldman Sachs Group Inc.  
Google Inc.  
GrubHub Inc.  
H&R Block Inc.  
Henry Schein Inc.  
Hillshire Brands Co.  
Honeywell International Inc.  
Kelly Services, Inc.  
King Pharmaceuticals Inc.  
Knorr-Bremse AG  
Lion Capital LLP  
NFL Enterprises LLC  
National Football League Players Association  
New Orleans Saints  
New York City Bar Association  
New York University  
Pfizer Inc.  
Philadelphia Eagles  
Purdue Pharma LP  
Sears Holdings Corp.  
Transdev SA



## Feature

### Courts Planning How To Stay Open Without Money

With no end in sight to the federal government shutdown, court officials tell Law360 how they're preparing to handle running out of money just over a week from now, anticipating everything from the lights going out to not being able to pay jurors. [Read full article »](#)

### Cohen To Testify Before House Oversight Committee

Michael Cohen, the former attorney for President Donald Trump who was sentenced to three years in prison for crimes related to his dealings with Trump, will testify before the House Committee on Oversight and Reform on Feb. 7, the committee announced Thursday. [Read full article »](#)

## Review

### 'On The Basis Of Sex' Insightfully Tracks RBG's Early Years

By limiting its focus to a single case early in U.S. Supreme Court Justice Ruth Bader Ginsburg's career as a civil rights attorney, the new film "On the Basis of Sex" skillfully illustrates the drive and legal acumen that propelled the pioneering young lawyer toward the high court. [Read full article »](#)

### 2nd Circ. Upholds Ex-Hunton Atty's Insider Trading Conviction

The Second Circuit upheld the insider trading conviction of former Hunton & Williams LLP patent attorney Robert Schulman on Thursday, rejecting his argument that a quip over dinner to a friend about Pfizer's planned acquisition of King Pharmaceuticals in 2010 was merely a joke or a brag. [Read full article »](#)

### Apple GC Earned \$5M In 2018, Over \$20M Stock On Horizon

Apple Inc.'s general counsel Kate Adams took home about \$5 million in pay last year, in addition to earning stock in the Cupertino, California-based computer giant that could be worth as much as \$23 million, according to the company's latest U.S. Securities and Exchange Commission filing. [Read full article »](#)

### Law360's Weekly Verdict: Legal Lions & Lambs

Williams & Connolly LLP landed on the legal lions list this week after winning a major U.S. Supreme Court ruling on arbitration for its client, while attorneys at Epstein Becker Green wound up among the legal lambs after failing to properly redact a federal court filing on behalf of Paul Manafort. [Read full article »](#)

## JOBS

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#### Traditional Labor Associate

Epstein Becker Green  
Los Angeles, California

#### L&E Partner -Mid-sized NYC law firm

Schoen Legal Search  
New York City, New York

#### Career Associate (Stamford Office)

McCarter & English, LLP  
Stamford, Connecticut

#### Employee Benefits and Executive

Compensation Attorney  
Bond, Schoeneck & King  
Syracuse, New York

#### Career Associate (Stamford Office)

McCarter & English, LLP  
Stamford, Connecticut

#### Employment Associate / NY mid-size law firm

Schoen Legal Search  
New York, New York

#### SENIOR DEPUTY GENERAL COUNSEL

Metropolitan Water District  
Los Angeles, California

Trump Organization Inc.

U.S. Chamber of Commerce

Wabtec Corporate

Wi-LAN Inc.

## GOVERNMENT AGENCIES

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Immigration Services

California Supreme Court

Equal Employment Opportunity  
Commission

European Commission

Executive Office of the President

Federal Aviation Administration

Federal Deposit Insurance Corp.

Federal Reserve System

Federal Trade Commission

Internal Revenue Service

Library of Congress

National Labor Relations Board

New Jersey Supreme Court

Office of the Comptroller of the  
Currency

Securities and Exchange  
Commission

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Transportation Security  
Administration

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U.S. General Services  
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U.S. Patent and Trademark Office

U.S. Supreme Court

United States Bankruptcy Court for  
the Southern District of New York

United States District Court for the  
Southern District of New York



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**From:** [Martin, Andrew](#)  
**Subject:** Politico: Senate passes bill to give back federal workers back pay. President says he will sign it.  
**Date:** Friday, January 11, 2019 8:15:35 AM  
**Attachments:** [image001.png](#)

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## Senate passes bill to give back federal workers back pay

By [IAN KULLGREN](#)

The Senate unanimously passed a [bill](#) today that would ensure back pay to workers displaced by the government shutdown.

President Donald Trump told Senate leaders he'll sign the bill, though it still requires approval from the House.

"I had the opportunity to talk to President Trump a few moments ago and wanted to indicate to our colleagues that he will sign the bill," Senate Majority Leader [Mitch McConnell](#) said on the floor.

Under the bill, federal workers still wouldn't get paid until after the shutdown ended, but they wouldn't have to wait until the next payday. It was one of the last actions the Senate took before adjourning for the weekend.



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**From:** [Morning Shift](#)  
**To:** [Ring, John](#)  
**Subject:** POLITICO's Morning Shift: Corps could pay for the wall — Countering Trump's emergency — Shutdown rundown  
**Date:** Friday, January 11, 2019 10:02:25 AM

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01/11/2019 10:00 AM EDT

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By REBECCA RAINEY ([rrainey@politico.com](mailto:rrainey@politico.com); [@RebeccaARainey](#))

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*With help from Ted Hesson*

*Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click*

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## QUICK FIX

If President Donald Trump declares a national emergency, he may divert billions of Army Corps of Engineers funds for storm reconstruction and flood prevention to build his border wall.

— **Democrats are weighing a lawsuit** against a national emergency declaration, but there's also a little-discussed (admittedly long-shot) legislative alternative.

— **The Senate voted to guarantee federal workers back pay** yesterday for the shutdown period, and unions maneuvered to shift blame from the seemingly impervious president to Senate Majority Leader Mitch McConnell.

— **Google shareholders filed a suit against the company** alleging it violated its fiduciary duties by granting large payouts to executives accused of sexual harassment.

**HAPPY FRIDAY!** Good morning! It's Jan. 11, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to [rrainey@politico.com](mailto:rrainey@politico.com), [thesson@politico.com](mailto:thesson@politico.com), [ikullgren@politico.com](mailto:ikullgren@politico.com) and [tnoah@politico.com](mailto:tnoah@politico.com). Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

## DRIVING THE DAY

**WILL ARMY CORPS PAY FOR WALL?:** Trump is weighing whether to expropriate billions of Army Corps of Engineers funding for storm reconstruction and flood prevention to build 315 miles of wall along the southern border, Courtney Kube and Julia Ainsley report for NBC News. That would require declaring a national emergency. Trump told reporters Thursday that he had an "absolute right" to do so, and said administration lawyers assured him that he could. More from NBC [here](#).

**HOUSE PUSHBACK:** House Democrats may file a lawsuit if the president declares a national emergency to build a border wall, POLITICO [reported](#) Thursday. But there's also a legislative avenue that hasn't occasioned much discussion.

**A provision** in the National Emergencies Act [would allow](#) the House to pass a joint

resolution to terminate the emergency. The Senate then would then vote the measure up or down within 18 days — not subject to a filibuster. Senate Democrats would have to pick off only four Republicans to reach 51 votes, a plausible scenario.

**The catch** (and it's a big one) is that Trump could then veto the joint resolution, sending it back to Congress, which probably would lack the two-thirds majority necessary to override. Still, it's worth trying, Elizabeth Goitein, co-director of the Brennan Center for Justice, told Morning Shift. (Goitein [wrote](#) that prescient [Atlantic piece](#) in December about Trump and emergency powers.) Congress has never voted to terminate an emergency, and passing a resolution would call it out as "an abuse of authority," she said.

## SHUTDOWN WATCH

### SHUTDOWN RUNDOWN:

—**The Senate unanimously passed** a bill that the president is expected to sign that would ensure back pay to workers displaced by the government shutdown. More on that from POLITICO's Ian Kullgren [here](#).

— **Hundreds of union members**, including many furloughed government workers, gathered less than one block from the White House Thursday to voice frustration over the shutdown, Kullgren reports, but their principal target was Senate Majority Leader [Mitch McConnell](#). "There are two people who can who can stop it right now," said Randi Weingarten, president of the American Federation of Teachers. "One lives down the block from us, and the other is Mitch McConnell." More [here](#).

**GOOGLE SUED OVER PAYOUTS:** Google shareholders filed a lawsuit against its parent company Alphabet Thursday, alleging that the tech giant violated its fiduciary duties when it shielded and approved large payouts to former executives with knowledge of credible sexual harassment allegations against them. "The Directors' wrongful conduct allowed the illegal conduct to proliferate and continue," the suit states. Read the complaint [here](#) and more from The Verge [here](#).

**Related:** "If we had a say, this wouldn't have happened: Reflecting on the #GoogleWalkout lawsuits," from the [Google Walkout organizers](#)

**NO SUPPORT AT THE BORDER:** "Nearly every lawmaker who represents a district or state along the U.S.-Mexico border — including two Republicans —

either opposes outright or more quietly declines to support President Donald Trump's \$5.7 billion request for a border wall," POLITICO's Ted Hesson and Renuka Rayasam report. Of the 17 lawmakers representing border states, only two — Sens. [Ted Cruz](#) (R-Texas) and [Martha McSally](#) (R-Ariz.) — said they supported it.

"The idea of a wall is somewhat off-putting to a lot of people," one Republican who has not endorsed the \$5.7 billion allocation told Fox News. That would be Texas Sen. [John Cornyn](#), who joined the president on his trip to the border Thursday. More [here](#).

## WORKER SAFETY

**EXEMPT FROM OVERSIGHT:** After scoring meetings with Michigan's then-Gov. Rick Snyder's executive staff and the state's safety agency, one of Detroit's largest developers, Bedrock Detroit, was shielded from state occupational safety and health enforcement, a Detroit Free Press investigation found. In May 2017 Bedrock executives "told several senior MIOSHA construction safety inspectors gathered in Detroit that the company was exempt from inspection," the report says, "emphasizing the company's role in downtown's resurgence," the Free Press's Jennifer Dixon reports. More [here](#).

**OVERTIME TO OIRA:** The Labor Department's proposal to expand overtime eligibility is heading to the White House's OIRA for regulatory review, sources told Bloomberg Law's Jaclyn Diaz. The proposal will rework the 2016 final rule issued under the Obama administration, which doubled (to \$47,476) the salary threshold under which virtually all workers were guaranteed overtime pay. Labor Secretary Alexander Acosta has instead suggested an inflation-adjusted threshold at about \$33,000, though we don't know whether that's the threshold in the proposed rule. More from Bloomberg Law [here](#).

## UNIONS

**PORT DRIVERS MISCLASSIFIED:** Two dozen port truck drivers in California were awarded nearly \$6 million in unpaid wages and other expenses following the California Labor Commissioner's determination that they were misclassified as independent contractors by NFI Industries, the Teamsters Union announced Thursday. Los Angeles City Attorney Mike Feuer announced Tuesday that his office filed lawsuits against three of NFI's Port of Los Angeles trucking companies

alleging they "engaged in a scheme" to misclassify truckers as independent contractors. Read that announcement [here](#) and a press release from the Teamsters [here](#).

**NEW RIGHTS UNDER JANUS?:** Unions are considering new strategies to look for "additional legal rights" under the Supreme Court's June ruling in [Janus v. AFSCME](#), Robert Bruno, a professor at the University of Illinois at Urbana-Champaign School of Labor and Employment, told In These Times. Bruno explained to Heather Gies that the "logic of First Amendment rights in the Janus ruling could call into question the constitutionality of state laws that limit union activity, such as restrictions on strikes or on subjects of bargaining." He adds that he still expects the high court's ruling barring public-sector unions from collecting mandatory agency fees will decrease unionization rates by 8.2 percent, and among teachers by 4.8 percent, over the long term. More [here](#).

**LA STRIKE GETS GREEN LIGHT:** A judge ruled Thursday that a Los Angeles teachers union gave proper notices of its planned strike, allowing the union with more than 30,000 members to picket the nation's second-largest school district Monday, Kimberly Hefling reports for POLITICO. Negotiations between the United Teachers Los Angeles and Los Angeles Unified School District have soured over disagreements regarding funding to reduce class sizes and to hire more nurses and librarians. More for Pros [here](#).

**MORE WOMEN, MINORITIES IN THE WORKFORCE:** The labor force participation rate was 63.1 percent [in December](#), a possible sign that rising wages might be enticing Americans to go back to work. More women and minorities are punching in, according to an analysis of Labor Department data by the Washington Post's Andrew Van Dam. Since December 2015, the labor participation rate among working-age women climbed 1.6 percentage points, while for men, that rate grew only by 0.7 points, the Post reports. "Black men and women, as well as Hispanic and Asian women, are reentering the workforce at higher rates than at any other point in the recovery, suggesting the benefits of the expansion are finally reaching most corners of the economy," Van Dam writes. More [here](#).

## COFFEE BREAK

— "How Companies Like Apple Sprinkle Secrets in Earnings Reports," from [The New York Times](#)

- "Furloughed federal workers may be eyeing their thrift savings plan to make ends meet. Here's why that should be a last resort." from [The Washington Post](#)
- "As Trump visits border, Texas landowners prepare wall fight," from [The Associated Press](#)
- "New Roles for Showtime Executives in Wake of Moonves Ouster," [The New York Times](#)
- "Fact check: Mexico will 'indirectly' pay for a border wall through the new trade deal," from [POLITICO](#)
- "Female Economists Push Their Field Toward a #MeToo Reckoning," from [The New York Times](#)

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**From:** [National Labor Relations Board](#)  
**To:** [Ring, John](#)  
**Subject:** RELEASE — NLRB Further Extends Time for Submitting Comments on Proposed Joint-Employer Rulemaking in Light of DC Circuit's Recent Browning-Ferris Decision  
**Date:** Friday, January 11, 2019 4:24:11 PM

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## NLRB Further Extends Time for Submitting Comments on Proposed Joint-Employer Rulemaking in Light of DC Circuit's Recent *Browning-Ferris* Decision

Washington, DC—In light of the unique circumstance presented by the December 28, 2018 issuance by the United States Court of Appeals for the District of Columbia Circuit of its decision in *Browning-Ferris Industries of California v. NLRB*, --- F.3d ---, 2018 WL 6816542, the National Labor Relations Board (“NLRB”) is extending the time for submitting comments regarding its Notice of Proposed Rulemaking (“NPRM”) on joint-employer status in order to permit issues raised by that decision to be addressed. **Comments must now be received on or before January 28, 2019.** Comments replying to the comments submitted during the initial comment period must be received by the NLRB on or before **February 11, 2019.**

Public comments should be submitted either electronically to [www.regulations.gov](http://www.regulations.gov), or by mail or hand-delivery to Roxanne Rothschild, Acting Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570-0001.

Due to the partial government shutdown, the Office of the Federal Register is unable to publish the notice of this extension. Please refer to the order [here](#).

Click [here](#) to read the request for comments in the Federal Register.

Click [here](#) to read the original announcement regarding the Notice of Proposed Rule-Making.

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**To:** [Ring, John](#)  
**Subject:** Shutdown threatens courts | Was viral rant legal malpractice? | How to redact a PDF  
**Date:** Friday, January 11, 2019 3:18:30 AM

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**Weekly Newsletter**  
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## TOP STORIES OF THE WEEK

FROM THE ABA JOURNAL



[What happens after federal courts run out of money to continue operations?](#)

Jan 7, 2019, 3:35 pm CST

A MESSAGE FROM KURENT BY TABS3 SOFTWARE

## [Kurent: Cloud Billing Made Easy. For Solos and Small Firms.](#)

Jan 2, 2019, 11:03 am CST

## [Lawyer's viral video rant amounted to malpractice, ex-client alleges in lawsuit](#)

Jan 9, 2019, 7:15 am CST

## [How to redact a PDF and protect your clients](#)

Jan 10, 2019, 6:00 am CST

## [When things go wrong, immigrants serving in the military look to Margaret Stock](#)

From the January-February 2019 magazine

### FEATURES

## [Lawyers turn the page as literary agents](#)

Attorneys who switched careers to represent authors are looking for the next blockbuster, and loving it.

From the January-February 2019 magazine

## [Reed Smith partner cites 'Animal House' and Tweety Bird, leading to scolding by federal judge](#)

Jan 8, 2019, 9:38 am CST

## [Kavanaugh's first Supreme Court opinion says courts have to respect parties' decision on arbitration](#)

Jan 8, 2019, 10:27 am CST

## [Sotomayor joins Gorsuch in dissent from cert denial in restitution case](#)

Jan 7, 2019, 2:42 pm CST

## [9th Circuit used 'puzzling' and too-general excessive-force analysis, Supreme Court says](#)

Jan 7, 2019, 2:00 pm CST

## [One of America's wealthiest corporate lawyers is retiring](#)

Jan 9, 2019, 1:39 pm CST

## [Networking: How successful lawyers do it and why you should, too](#)

Jan 10, 2019, 6:30 am CST

## [How introverted lawyers can harness their traits for success](#)

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Jan 8, 2019, 7:30 am CST

[Dispute over \\$300 in unpaid wages cost lawyer about \\$100,000, he says](#)

Jan 10, 2019, 11:24 am CST

[Ex-judge who posed as 'Don Tequila' sentenced to 6 years in online revenge case](#)

Jan 10, 2019, 1:39 pm CST

Stack of books.



QUESTION OF THE WEEK

[Have you ever thought about writing a book?](#)

If so, what would your book be about? Are you already a published author? Answer in the comments.

ABA Journal cartoon.



THIS WEEK'S FEATURED BLAWG  
FROM OUR BLAWG DIRECTORY

[Immigration Impact](#)

Staff of the nonpartisan American Immigration Council writes on immigration reform, enforcement, due process and workforce issues.



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**From:** [GovExec Today](#)  
**To:** [Ring, John](#)  
**Subject:** Unions rally against "lock out;" how the shutdown affects "use or lose" leave  
**Date:** Friday, January 11, 2019 5:31:55 AM

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**GovExec Today**

January 11, 2019



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**[Federal Unions Decry Government 'Lock Out' At Rally](#) // Erich Wagner**

Democratic lawmakers, federal workers demand a swift end to the partial government shutdown on its 20th day.

**[Taking Stock of Your TSP](#) // Tammy Flanagan**

Don't make rash decisions based on recent rocky performance.

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**[Flash Poll: Secure Mobility without Perimeters](#)**

Government agencies are struggling to adapt their security architectures to the newly fluid and unsecured ecosystem that mobile devices have introduced. As the government workforce grows increasingly accustomed to accessing work data anywhere at any time in order to effectively execute their missions, how can agency leadership best protect against security vulnerabilities?

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**[Senate Passes Back Pay Bill for Furloughed Feds, Trump Says He Will Sign It](#) // Tom Shoop**

Move is aimed at "easing anxiety" among affected employees.

**[Feds Impacted by Shutdown Can Roll Over 'Use-or-Lose' Leave, OPM Clarifies](#) // Eric Katz**

The leave must have been scheduled by Nov. 24, 2018.

**[With 5,000 Furloughed, FBI Agents Group Petitions for Resumed Funding](#) // Charles S. Clark**

As shutdown shrinks resources, investigations and surveillance operations are impeded.

**[What Federal HR Could Learn from Tennessee's Reforms](#) // Steve Goodrich**

What the state has accomplished is remarkable and there are lessons for civil service reform.

**[Older Folks Were Most Likely To Share 'Fake News' In 2016](#) // James Devitt**

Surprisingly few Americans shared "fake news" on Facebook during the 2016 election season,

but some of us were more likely to do so than others.

[Shutdown Roundup: Fewer Food Inspections, Tips For Furloughed Feds to Make Ends Meet and the Future of SNAP Benefits](#) // Ross Gianfortune

The safety of the food system has been placed at risk by the shutdown.

[Senators Call For FCC Investigation of Phone Companies Selling Location Data](#) // Caitlin Fairchild

Your telecom company knows where you are—and it may be selling that information.

[Medicaid 'Buy-In' Could Be a New Health Care Option for the Uninsured](#) // Michael Ollove

"We think 2019 is going to be the year of Medicaid buy-in," one health care advocate said.

[Hundreds of IT Flaws Leave the Pentagon's Finances at Risk](#) // Jack Corrigan

An internal watchdog found 800 new vulnerabilities across the Defense Department's IT infrastructure.

[A Prolonged Shutdown Will Hit Counties With Tight Cash Flows Hardest](#) // Dave Nyczepir

From wildfire prevention efforts to farm loans to mass transit, here are the latest potential casualties of a long-term funding hiatus.

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[Flash Poll: Secure Mobility without Perimeters](#)

Government agencies are struggling to adapt their security architectures to the newly fluid and unsecured ecosystem that mobile devices have introduced. As the government workforce grows increasingly accustomed to accessing work data anywhere at any time in order to effectively execute their missions, how can agency leadership best protect against security vulnerabilities?

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**From:** [GovExec Breaking News](#)  
**To:** [Ring, John](#)  
**Subject:** D.C. Area Agencies That Weren't Already Shuttered to Close Monday Due to Snow  
**Date:** Sunday, January 13, 2019 10:01:36 PM

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## GovExec Breaking News

January 13, 2019



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### [D.C. Area Agencies That Weren't Already Shuttered to Close Monday Due to Snow //](#)

GovExec Staff

Federal employees in the Washington, D.C., area who weren't already home due to the partial shutdown will get a snow day on Monday.

[Read full article »](#)

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**From:** [GovExec Today](#)  
**To:** [Ring, John](#)  
**Subject:** A payroll glitch; shutdown becomes longest ever; more shutdown lawsuits  
**Date:** Monday, January 14, 2019 5:35:22 AM

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**GovExec Today**

January 14, 2019



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**[Payroll Glitch Gives Employees at One Non-Funded Agency Paychecks During the Shutdown](#)** // Charles S. Clark

Some 30 staffers at Chemical Safety Board wrongly received normal pay deposits on Friday.

**[D.C. Area Agencies That Weren't Already Shuttered Will Close Monday Due to Snow](#)** // GovExec Staff

Announcement does not apply to employees who were furloughed anyway due to the partial shutdown.

**Brought to you by AWS**

**[Government's AI Odyssey: A Candid Poll on AI and Machine Learning in the Federal Government](#)**

Though the practical capabilities of artificial intelligence (AI) and machine learning are rapidly evolving, there is disparity between the achievements of specific federal agencies. While some Department of Defense (DoD) and civilian organizations are introducing the technology into contract procurements, bug detection, and law enforcement, others have not adopted a single instance of AI/ML. [Privacy Policy](#).

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**[Saturday, the Shutdown Became the Longest Ever. And Illegal.](#)** // Eric Katz

According to court precedent, the government is about to violate federal law with its own employees.

**[Lawsuits: Making Feds Work During Shutdown Violates 13th Amendment](#)** // Erich Wagner

Federal employee unions also claim the Trump administration's efforts to maintain services despite the shutdown constitute a violation of the Anti-Deficiency Act.

**[Furloughed Feds Poised to Receive Back Pay After House Sends Measure to Trump](#)** // Eric Katz

The president said he would sign the bill, which would retroactively compensate feds when the shutdown ends.

**[Senator Challenges Park Service Deal to Keep Tower Open in Trump Hotel](#)** // Charles S.

Clark

Democrat Peters says GSA is offering "special treatment" while other federal buildings are shuttered.

[How a Government Shutdown Affects the Economy](#) // Scott R. Baker

Withholding pay from even some government workers could introduce a significant economic speed bump in the short run.

[Analysis: \\$5 Billion Could Buy a Lot of Border Security](#) // Krishnadev Calamur

Fixing the asylum system, upgrading ports of entry, and tightening security checkpoints might do more to advance Trump's goals than a wall.

[Shutdown Roundup: 'Real Damage' to Aviation, EPA Slows Pollution Inspections and FEMA Stops Contracts](#) // Ross Gianfortune

Local government and air travel are feeling the effects of the shutdown acutely.

[Science Gets Shut Down Right Along With The Federal Government](#) // Angela K. Wilson

Setting aside personal hardships for workers who don't see a paycheck during the shutdown, the research enterprise itself loses out, too. And unlike back pay, this lost time can never be made up.

[The Impact of the Government Shutdown Is About to Snowball](#) // Russell Berman

The consequences will only get more severe after federal workers miss their first paychecks Friday—even as the Trump administration tries, in ways large and small, to mitigate them.

[Yubico Creates Physical Security Key for iPhones](#) // Caitlin Fairchild

Android devices no longer get to have all the fun.

[A Warning for Elected Officials on Social Media—Court Says Don't Block Critics](#) // Laura Maggi

A social media page can be the equivalent of a public meeting, a federal appellate court found for the first time last week.

[The Pentagon Has More than 250 Cyber Gaps in Its Networks, Watchdog Says](#) // Jack Corrigan

The Defense Department has a lot of work to do to remedy some years-old cyber issues.

[Few Signs So Far Sports Wagering Will Be Huge Boon for State Budgets](#) // Bill Lucia

"Large amounts of tax revenue from sports gambling is no sure bet," one expert notes.

### [Government's AI Odyssey: A Candid Poll on AI and Machine Learning in the Federal Government](#)

Though the practical capabilities of artificial intelligence (AI) and machine learning are rapidly evolving, there is disparity between the achievements of specific federal agencies. While some Department of Defense (DoD) and civilian organizations are introducing the technology into contract procurements, bug detection, and law enforcement, others have not adopted a single instance of AI/ML. [Privacy Policy](#).

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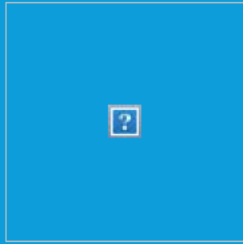
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**To:** [Ring, John](#)  
**Subject:** First Move: Scheduling Laws Raise Concerns • Murray Energy Seeks Standard  
**Date:** Monday, January 14, 2019 7:07:22 AM

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What you need to know to start your day.

## Scheduling Laws Raise Concerns • Murray Energy Seeks Standard



By [Patricio Chile](#)

### **SCHEDULING LAWS HURT PROFITS, EMPLOYERS SAY**

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The food service industry is known for its unpredictability. Some days are busy, some aren't, and workers often quit.

Four cities and the state of Oregon have enacted predictive scheduling legislation that penalizes fast food or chain restaurants if they don't schedule employees with advance notice, Andrew Wallender [reports](#). But the new laws are leaving many businesses with extra costs and a sense that the rules create an uneven playing field, restaurants say.



## **MURRAY ENERGY SEEKS STANDARD IN CASE**

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Murray Energy Corp. wants a federal appeals court to create a standard for deciding when mine operators have interfered with mine workers' rights, which a safety appeals panel has avoided doing for more than 40 years.

Representatives for the coal company will appear before the U.S. Court of Appeals for the District of Columbia Circuit tomorrow to challenge a ruling that its subsidiaries interfered with workers' ability to complain to the Mine Safety and Health Administration. A ruling from the appeals court could create a standard for interference of miners' rights and could have ramifications for other areas of workplace law, mine safety experts say. Fatima Hussein has [the story](#).

## **OTHER STORIES WE'RE WATCHING**

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- A divided NLRB on Friday [clarified](#) its standard for determining when worker action qualifies as “concerted” activity and gains the protection of federal labor law.
- The **U.S. Supreme Court** agreed to review two employment law cases on Friday: one on [oil rig worker wages](#), the other on [filing requirements](#) in discrimination lawsuits. The justices could take on more—including cases on anti-bias protections for LGBT workers—when it issues orders today at 9:30 a.m.
- President Donald Trump’s nominee for attorney general, William Barr, has called the qui tam provisions of the **False Claim Act** allowing individuals to file suit on behalf of the government “patently unconstitutional.” Sidley Austin attorneys Scott Stein, Doreen Rachal, and Naomi Igra [say this could be a hot topic](#) confirmation hearings and explore his views, which suggest a Barr Justice Department would maintain, if not amplify, DOJ’s recent efforts to move for dismissal of qui tam cases that do not serve the federal government’s interests.
- Six federal workers are named plaintiffs in a new Fair Labor Standards Act [complaint](#) against the government for failing to pay them during the **partial shutdown** that began Dec. 22. The lawsuit, filed Jan. 11 in the U.S. Court of Federal Claims, asks the court to order back pay and damages for the plaintiffs and others who’ve been told to report to work both for regular shifts and overtime, but haven’t been paid.
- The NLRB has [extended the deadline](#) for public comments on the board’s **proposed ‘joint employer’** rule. Interested parties now have until Jan. 28 to weigh in on the proposal, which has been complicated by a recent appeals court decision.
- Looking for the latest on the shutdown, joint employment, and the Labor Department’s **new overtime rule**? Punch in [here](#).

## AROUND THE WEB

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- Two **Bay Area** restaurateurs have been ordered to pay \$1.7 million to dozens of their former employees for garnishing their tips, denying overtime pay and medical care, and housing them in abhorrent conditions, [the San](#)



[Francisco Chronicle reports.](#)

- The **U.S. Fish and Wildlife Service** is ordering federal workers back to wildlife refuges across the nation during the government shutdown to help oversee scheduled hunts, continue maintenance, and prepare for fire season, [the Huffington Post reports.](#)
- Petco will permanently shutter its pet supply brand Drs. Foster & Smith, cutting 289 full-time and part-time employees based in Rhineland, Wis., [WXPR reports.](#)

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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**Subject:** From TSA Call Outs to FAA Protests, Airports Are Feeling the Shutdown Pressure  
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## GovExec Update

January 14, 2019



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### [From TSA Call Outs to FAA Protests, Airports Are Feeling the Shutdown Pressure](#) // Eric Katz

Airports across the country are scrambling to adjust to growing discontent among the federal employees that report to them, including increased no shows and protests inside the terminals.

[Read full article »](#)

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**From:** [Employment Law360](#)  
**To:** [Ring John](#)  
**Subject:** Law360 Names Practice Groups Of The Year  
**Date:** Monday, January 14, 2019 4:05:42 AM

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## EMPLOYMENT

Monday, January 14, 2019



### TOP NEWS

#### Law360 Names Practice Groups Of The Year

Law360 congratulates the winners of its 2018 Practice Group of the Year awards, which honor the law firms behind the litigation wins and major deals that resonated throughout the legal industry in the past year.

[Read full article »](#)

#### The Firms That Dominated In 2018

Law360's top four Firms of the Year notched a combined 32 Practice Group of the Year awards after successfully securing wins in bet-the-company matters and closing high-profile, big-ticket deals for clients throughout 2018.

[Read full article »](#)

#### Feature

#### NLRB Extends Comment Period In Joint Employer Battle

The National Labor Relations Board on Friday issued a surprise two-week extension of the public comment period on the board's proposal to roll back its controversial Browning-Ferris joint employer test, but the nearly 30,000 comments submitted so far make it clear there's a sharp divide between pro-business and pro-labor factions over how broad the standard should be.

[Read full article »](#)

#### Supreme Court To Eye Title VII Exhaustion Requirements

The U.S. Supreme Court agreed Friday to consider whether federal courts can hear a workplace bias claim even if the worker making it didn't complain to the U.S. Equal Employment Opportunity Commission before suing, agreeing to review a Fifth Circuit ruling that revived a Texas worker's religious bias suit. [Read full article »](#)

#### High Court Will Take Up Calif. Offshore Drilling Wage Dispute

The U.S. Supreme Court agreed Friday to review a Ninth Circuit decision that California's wage-and-hour laws apply to offshore drilling workers in the Golden State, a ruling that industry claims conflicts with the Fifth Circuit's conclusion that federal law should apply to workers on the Outer Continental Shelf. [Read full article »](#)

#### Congress Greenlights Back Pay For Furloughed Fed Workers

The U.S. House of Representatives overwhelmingly agreed on a bill to give furloughed federal workers back pay after the government shutdown ends, sending the bill to President Donald Trump's desk Friday. [Read full article »](#)

### DISCRIMINATION

#### Ford, UAW Can't Shake Worker's Fair Representation Suit

Ford Motor Co. and the United Auto Workers must face claims that they mishandled a dispute with a stamping plant employee, who claims she was fired after filing multiple harassment complaints, by appointing a longtime Ford executive's sibling as an arbitrator, an Illinois judge ruled Friday.

[Read full article »](#)

#### Law360 Pro Say Podcast



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#### New Cases

[Discrimination \(68\)](#)

[ERISA \(25\)](#)

[Labor \(46\)](#)

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[Clyde & Co](#)

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[Cravath Swaine](#)

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[DLA Piper](#)

[Davis Polk](#)

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[Debevoise & Plimpton](#)

## Ex-Ford Worker's Race Discrimination Claims Shot Down

An Illinois federal judge on Friday dismissed claims by a former Ford Motor Co. employee that he was discriminated against and endured a hostile work environment, finding that the alleged harassment against the African-American worker, including purportedly being called a monkey, wasn't "truly outrageous" and not based on race. [Read full article »](#)

## Alphabet Board Hid Execs' Misconduct, 2nd Investor Suit Says

Several executives from Google Inc. parent Alphabet Inc., including its chief legal officer, were hit with another lawsuit from a shareholder in California state court Thursday, claiming that covered-up sexual misconduct has hurt the company's value. [Read full article »](#)

## WAGE & HOUR

### Cablevision Inks \$1.4M Deal In Technicians' Wage Suit

A \$1.4 million settlement resolving claims that Cablevision Systems New York City Corp. flouted federal and state labor laws by making its field technicians work off the clock cleared its first hurdle Friday after a New York federal judge signed off on the deal. [Read full article »](#)

### Walgreens Cashier Can Sue After Settlement, 9th Circ. Says

A Walgreens cashier's participation in a \$23 million settlement with the pharmacy chain over wage-and-hour claims doesn't prevent her from pursuing a state court case alleging the company wrongly denied her and others suitable seating, the Ninth Circuit has ruled. [Read full article »](#)

### Lyft Driver Cannot End Suit To Trigger Appeal, Judge Rules

A Lyft driver fighting his status as an independent contractor will have to proceed to arbitration, rather than having his case dismissed so he can appeal to the First Circuit, a Massachusetts federal judge ruled Friday in agreeing with the ride-sharing company's argument that the former path will resolve the putative class action more quickly. [Read full article »](#)

## LABOR

### Air Traffic Controllers Union Sues Feds Over Shutdown Pay

A union representing thousands of U.S. air traffic controllers sued the federal government on Friday for forcing its members to work without pay since December, joining a number of other labor unions that have taken the Trump administration to court over the ongoing shutdown. [Read full article »](#)

## NONCOMPETES

### Logistics Co.'s No-Hire Clause Invalid: Pa. Appeals Court

A Pittsburgh logistics company can't enforce part of a contract that bars a shipping company from hiring its employees, in part because its business interests are already protected by another clause barring the shipper from poaching its customers, the Superior Court of Pennsylvania ruled in a precedential opinion Friday. [Read full article »](#)

## WHISTLEBLOWER

### Analysis

### DOJ's Slumping FCA Hauls Cloud Future Recovery Prospects

The U.S. Department of Justice's ho-hum performance last year in False Claims Act litigation marked its second straight year of sagging recoveries, sparking questions about whether the DOJ can revive its glory days of blockbuster FCA hauls. [Read full article »](#)

## WORKER SAFETY

### NFL Concussion Firms Seek \$3.2M From Common Fund

Seeger Weiss LLP has asked the Pennsylvania federal court overseeing the

Dechert  
Del Sole Cavanaugh  
Desmarais LLP  
Donohue Brown  
Duane Morris  
Eckert Seamans  
Eversheds Sutherland  
Fish & Richardson  
FordHarrison  
Fried Frank  
Gibson Dunn  
Goldstein Law PLLC (Minneapolis, MN)  
Greenberg Traurig  
Hagens Berman  
Hinshaw & Culbertson  
Hogan Lovells  
Holland & Knight  
Hueston Hennigan  
Jenner & Block  
Jones Day  
Joseph Hage  
Kaplan Hecker  
Katz Friedman  
Keker Van Nest & Peters  
Kelley Drye  
King & Spalding  
Kirkland & Ellis  
Kramer Levin  
Labaton Sucharow  
Lash & Goldberg  
Latham & Watkins  
Law Office of Christopher Q. Davis  
LegalForce RAPC Worldwide  
Levin Sedran  
Lewis Brisbois  
Lichten Liss-Riordan  
Lief Cabraser  
Locks Law Firm  
Marshall Dennehey  
Mayer Brown  
McDermott Will  
McGuireWoods  
McKool Smith  
Milberg Tadler  
Mintz Levin  
Morgan Lewis  
Morrison & Foerster  
Motley Rice  
Munger Tolles  
Munsch Hardt  
Norton Rose Fulbright  
Ogletree Deakins

NFL concussion settlement to distribute \$3.2 million from a common benefit fund to pay itself and a handful of other firms for their work on class-related matters, with Seeger Weiss itself requesting \$2.7 million. [Read full article »](#)

## PEOPLE

### Greenberg Traurig Snags Employment Pro From Polsinelli

Greenberg Traurig LLP has announced it has added a prominent employment attorney from Polsinelli PC with years of experience litigating class actions, making him a shareholder at its San Francisco office. [Read full article »](#)

## EXPERT ANALYSIS

### Opinion

#### Congress Needs More Sexual Harassment Protections

A recently passed bill that changes how sexual harassment complaints are handled in Congress is a step in the right direction. However, it falls considerably below what is necessary to make staffers, interns and fellows feel safe to come forward without fear of retaliation, says Marjorie Mesidor of Phillips & Associates. [Read full article »](#)

### Opinion

#### The Case For Lawyer-Directed Litigation Funding In NY: Part 2

Lawyer-directed nonrecourse litigation funding is more likely to protect a lawyer's exercise of independent professional judgment than traditional means of litigation finance, and furthermore enables worthwhile cases that otherwise could not be funded, say Peter Jarvis and Trisha Thompson of Holland & Knight LLP. [Read full article »](#)

## LEGAL INDUSTRY

### Feature

#### Why Some Boutiques Doled Out Behemoth Year-End Bonuses

A select group of litigation boutiques not only met but exceeded BigLaw benchmarks when it came to year-end associate bonuses in 2018, upping the ante amid a fierce fight for talent and prestige. [Read full article »](#)

### Ginsburg Cancer-Free, But Will Miss More Arguments

Justice Ruth Bader Ginsburg is now cancer-free and recovering smoothly following her lung surgery last month, but the 85-year-old justice will miss another week of oral arguments as she continues to work from home, a court spokeswoman said Friday. [Read full article »](#)

### Analysis

#### Up Next At High Court: Booze, Property And Class Actions

As Justice Ruth Bader Ginsburg's health and a pair of high-profile Trump administration appeals continue to grab attention, the U.S. Supreme Court will forge ahead Monday with a packed week of oral arguments in cases involving state liquor laws, real estate takings and who can remove class actions to federal court, among others. [Read full article »](#)

### Top Attys More Upbeat On Their Firms Than On The Economy

Law firm leaders in the new year are overall fairly confident about their own firms' prospects, but have more gloomy predictions about the U.S. and global economies, according to survey results released by Citi Private Bank. [Read full article »](#)

### Judge Sours In Yogurt Co. Fight, Calls Attys 'Children'

The back-and-forth between Chobani and Dannon in a dispute over the sugar content of the companies' yogurt drinks left a bad taste in the mouth of a New York federal judge, who chided the attorneys for "behaving like small children" Friday in a terse response to a motion. [Read full article »](#)

### Boies Schiller Wins \$650K In Fee Spat With Chinese Billionaire

Orrick Herrington  
Outten & Golden  
Paul Weiss  
Phillips & Associates  
Podhurst Orseck  
Polsinelli  
Proskauer Rose  
Quinn Emanuel  
Recht Kornfeld  
Reed Smith  
Ropes & Gray  
Sanford Heisler Sharp  
Schiff Hardin  
Schulte Roth  
Seeger Weiss  
Selendy & Gay  
Seyfarth Shaw  
Shearman & Sterling  
Sheppard Mullin  
Sidley Austin  
Simpson Thacher  
Skadden  
Squire Patton Boggs  
Steptoe & Johnson LLP  
Sterne Kessler  
Sullivan & Cromwell  
Susman Godfrey  
Troutman Sanders  
Venable LLP  
Vinson & Elkins  
Wachtell Lipton  
Weil Gotshal  
White & Case  
White and Williams  
Wigdor LLP  
Wiley Rein  
Wilkinson Walsh  
Williams & Connolly  
WilmerHale  
Winston & Strawn  
Woodley & McGilivray  
Wright Close  
Zuckerman Spaeder

## COMPANIES

AT&T Inc.  
Altice SA  
Altice USA  
American Federation of  
Government Employees  
American Federation of Labor and  
Congress of Industrial  
Organizations  
American Petroleum Institute Inc.



A New York state court judge has approved an arbitration settlement in a fee fight between Boies Schiller Flexner LLP and former client Guo Wengui, ordering the Chinese billionaire to pay over \$600,000 in outstanding legal bills. [Read full article »](#)

### Appellate Judge Resigns After Emails To Lover Reveal Ruling

A Colorado appellate judge is resigning after a state disciplinary commission found she called another judge a racist epithet and revealed a planned ruling in a contentious case to a man she was having an affair with, a court spokesman said Friday. [Read full article »](#)

### Most LegalForce Claims Against Rival UpCounsel OK'd

A California federal judge has allowed most claims of false advertising and unfair competition brought by an intellectual property firm against online legal company UpCounsel Inc. to continue. [Read full article »](#)

#### Feature

### GC Cheat Sheet: The Hottest Corporate News Of The Week

Shareholders sued Google parent Alphabet's board of directors for allegedly covering up sexual harassment, Vietnam accused Facebook of breaching its cybersecurity law, and Clyde & Co LLP launched a new program to level gender imbalance. These are some of the stories in corporate legal news you may have missed in the past week. [Read full article »](#)

### In Case You Missed It: Hottest Firms And Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week. [Read full article »](#)

#### Podcast

### Law360's Pro Say: Can Trump Get His Wall Without Congress?

With the U.S. government shutdown nearing three weeks, President Donald Trump threatened this week to declare a national emergency to pay for a border wall that Congress won't approve. Can he do that? We'll try to figure it out on the latest Pro Say podcast. [Read full article »](#)

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Los Angeles, California

#### L&E Partner -Mid-sized NYC law firm

Schoen Legal Search  
New York City, New York

#### Career Associate (Stamford Office)

McCarter & English, LLP  
Stamford, Connecticut

#### Career Associate (Stamford Office)

McCarter & English, LLP  
Stamford, Connecticut

#### Employment Associate / NY mid-size law firm

Schoen Legal Search  
New York, New York

#### SENIOR DEPUTY GENERAL COUNSEL

Metropolitan Water District  
Los Angeles, California

American Staffing Association

AmerisourceBergen Corp.

Bristol-Myers Squibb Co.

Broadcom Ltd.

CBS Corporation

Cablevision Systems Corporation

Center for Justice

Chevron Corp.

Chobani LLC

Choice Hotels International, Inc.

Citigroup Inc.

Concho Resources Inc.

DaVita Inc.

Emulex Corporation

Epic Systems Corp.

Facebook

Ford Motor Co.

Google Inc.

Groupe Danone

Home Depot Inc.

Lyft Inc.

Major Lindsey & Africa

NFL Enterprises LLC

National Air Traffic Controllers  
Association

National Association of Home  
Builders

National Federation of Independent  
Business

National Multifamily Housing  
Council

National Treasury Employees  
Union

New York City Bar Association

New York State Bar Association

Oath Inc.

Oracle Corp.

Pacific Legal Foundation

Parker Drilling Company

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United Auto Workers

Verizon Communications Inc.

Walgreen Co.

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Yahoo! Inc.

#### GOVERNMENT AGENCIES

Colorado Supreme Court

Equal Employment Opportunity  
Commission

Federal Aviation Administration

Internal Revenue Service  
National Labor Relations Board  
National Park Service  
Permanent Court of Arbitration  
Securities and Exchange  
Commission  
U.S. Customs and Border  
Protection  
U.S. Department of Defense  
U.S. Department of Justice  
U.S. Department of Labor  
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From: [Martin, Andrew](#)  
Subject: Legal News FYI 01-14-19  
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Monday, January 14, 2019

### **Scheduling Laws Raise Concerns • Murray Energy Seeks Standard**

**BloombergLaw - Daily Labor Report** 14 Jan 2019 07:06

By Patricio Chile Scheduling Laws Hurt Profits, Employers Say The food service industry is known for its unpredictability. Some days are busy, some aren't, and workers often quit. Four cities and the state of Oregon have enacted predictive scheduling...

### **Mining Case Could Clarify Worker Rights Interference Standard**

**BloombergLaw - Occupational Safety & Health Reporter** 14 Jan 2019 06:17

Mine Safety • D.C. Circuit could establish standard for what constitutes interference with miners' rights • Case could have ramifications in other areas of employment law By Fatima Hussein Mining companies may soon have an answer to a more than 40-year...

### **Punching In: Shutdown, Overtime, and Joint Employment**

**BloombergLaw - Daily Labor Report** 14 Jan 2019 06:07

By Chris Opfer and Jaclyn Diaz Monday morning musings for workplace watchers The Lowdown on the Shutdown | A Hush Falls Over the Business Community | A Wrench in the Joint Employer Rule Chris Opfer: This is Day 24 of the partial government shutdown,...

### **Bargaining Unit Can Still Be 'Micro' under 'Community of Interest' Standard**

**National Law Review** 13 Jan 2019 18:24

Article By After the NLRB adopted a new standard for determining bargaining-unit composition, many expected fewer micro-units would result. PCC Structurals , 365 NLRB No. 160 (2017) ( PCC I ). However, when the employer filed a request for review...

### **NLRB hears both sides as St. James Rocky Mountain Clinic nurses seek to unionize**

**Montana Standard, The (Butte, MT)** 13 Jan 2019 08:09

The National Labor Relations Board heard arguments on Friday from representatives of a small group of registered nurses at St. James Rocky Mountain Clinic seeking to unionize as well as from hospital administrators who say they need to expand the scope...

### **NLRB Majority: Unqualified Notice to Picket Jobsite Where Neutrals Are Present Violates Act**

**National Law Review** 11 Jan 2019 18:11

We recently saw interesting decisions from the NLRB including cases about the employer's duty to provide information about tax cuts , the lawfulness of litigation holds , and the validity of decertification petitions . At the end of December, a divided...

### **Labor Board Pushes Back 'Joint Employer' Deadline By 2 Weeks**

**BloombergLaw - Daily Labor Report** 11 Jan 2019 17:26

• Court ruling created need for extension, board says • Deadline moved from Jan. 14 to Jan. 28 By Robert Iafolla The National Labor Relations Board for the third time extended the deadline to file comments on its "joint employer" proposal, pushing the...

### **Dump 'Joint Employer' Proposal, Democratic State AGs tell NLRB**

**BloombergLaw - Daily Labor Report** 11 Jan 2019 14:57

• Current joint employment test works well, state AGs say • AGs from California, New York, eight other states, and D.C. By Robert Iafolla Attorneys general from several Democratic states want the National Labor Relations Board to scrap its plan to narrow...

### **NLRB Fired Black Lawyer for Losing Evidence, Not Due to Bias**

**Bloomberg Law : Big Law Business** 11 Jan 2019 14:03

A former National Labor Relations Board attorney was removed from his job because he lost confidential witness statements and tried to mislead investigators, not due to discrimination, a federal judge ruled.

### **Back Pay for Furloughed Federal Workers Approved, Sent to Trump**

**BloombergLaw - Daily Labor Report** 11 Jan 2019 13:37

Federal Employees • Federal worker retroactive pay measure passes House, Senate • Trump expected to sign legislation By Tyrone Richardson Congress Jan. 11 advanced legislation that would provide back pay when the government shutdown ends for federal...



Legal News FYI monitors news, cases, and legislative developments of interest to the NLRB. To be added to or removed from the distribution list contact Andrew Martin. Please note that these are external links and the Agency takes no responsibility for their content.

**From:** [Employment Law360](#)  
**To:** [Ring John](#)  
**Subject:** 3rd Circ. Kills Class But Won't Touch FLSA Cert. In RBS Suit  
**Date:** Thursday, January 3, 2019 3:35:27 AM



## EMPLOYMENT

Thursday, January 3, 2019



### TOP NEWS

#### 3rd Circ. Kills Class But Won't Touch FLSA Cert. In RBS Suit

The Third Circuit has overturned a decision that certified a class of RBS Citizens Bank NA loan officers who allegedly got stiffed on overtime pay, but refused to review the lower court's ruling certifying the suit as a Fair Labor Standards Act collective action. [Read full article »](#)

#### Ex-AT&T Workers Can't Duck Arbitration After Clicking Link

AT&T on Wednesday won its bid to arbitrate individual age discrimination claims by two former company workers pursuing a putative collective action against the telecommunications giant in New Jersey federal court, with its victory turning on a hyperlink to an arbitration agreement in emails sent to the onetime employees. [Read full article »](#)

#### Mondelez Union Lands Win In Fight Over 7-Day Workweek

An Illinois federal judge ruled Wednesday that a machinists union can keep a provision for voluntary seven-day workweeks in its collective bargaining agreement with food distributor Mondelez Global LLC, finding that the provision does not violate state law and should not have been changed without input from the union. [Read full article »](#)

#### Union Smacks Feds With FLSA Suit Over Shutdown Pay

The U.S. government is flouting the Fair Labor Standards Act by not paying federal employees required to work during the partial shutdown, the American Federation of Government Employees alleged in a putative collective action filed in the U.S. Court of Federal Claims on Wednesday. [Read full article »](#)

#### Uber Driver's \$294M Wage Suit Cleared To Proceed In Canada

A services agreement requiring Uber drivers in Ontario to arbitrate disputes with the ride-hailing company in the Netherlands is unenforceable, a Canadian appeals court ruled Wednesday, paving the way for a CA\$400 million (\$294 million) proposed class action accusing Uber of violating Ontario labor law to proceed. [Read full article »](#)

### DISCRIMINATION

#### Pa. AG Says Porn-Email Scandal, Not Bias, Made Agent Quit

The Pennsylvania Attorney General's Office has sought to dismiss what remained of a former narcotics agent's discrimination case, arguing that the agent chose to resign rather than respond to a disciplinary hearing related to his alleged participation in a pornographic-emails scandal that had roiled the AG's office and the state's judiciary. [Read full article »](#)

#### Ex-Dickies Manager Seeks \$1M In Age Discrimination Suit

A former marketing director for work clothes giant Williamson Dickie Mfg. Co. has told a Texas state court he was sacked because of his age as the company carried out a campaign to "get younger" at the senior management level, seeking more than \$1 million in damages. [Read full article »](#)

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### New Cases

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[ERISA \(16\)](#)

[Labor \(32\)](#)

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[Sanford Heisler Sharp](#)

[Seeger Weiss](#)

[Swartz Swidler](#)

[Torys LLP](#)

[Williams & Connolly](#)

[Willkie Farr](#)

## LABOR

### NLRB Must Decide Union Lobbying Fee Row, DC Circ. Hears

A former nurses union member on Wednesday urged the D.C. Circuit to force the National Labor Relations Board to decide her challenge to the union's charging of nonmember objectors for political lobbying expenses.

[Read full article »](#)

## WHISTLEBLOWER

### Analysis

#### Health Care Drove Most Of \$2.9B In 2018 FCA Recoveries

False Claims Act recoveries hit their lowest level in a decade in fiscal year 2018, with the health care and life sciences industries once again leading the way while recoveries from other industries dropped off. [Read full article »](#)

## WORKER SAFETY

### Analysis

#### NFL's 'Cynical' Appeals Could Gut Concussion Settlement

Two appeals filed by the NFL in its landmark concussion settlement have the potential to upend the program and make it drastically more difficult for brain-damaged former players to get paid, according to experts and irate player attorneys, who say in one nonpublic filing that the situation represents "the NFL at its most cynical." [Read full article »](#)

## BANKRUPTCY

### Makeup Brand Co. Seeks OK For Employee Bonuses In Ch. 11

Cosmetics maker Glansol Holdings Inc. has asked a New York bankruptcy court for permission to pay up to \$1.4 million in bonuses to its executives, saying the payments are needed to maintain morale as the company heads for the auction block. [Read full article »](#)

## PEOPLE

### Jackson Lewis Snags Quarles & Brady Employment Vet

Jackson Lewis PC has bolstered its Indianapolis office by hiring a seasoned employment attorney from Quarles & Brady LLP, the management-side powerhouse has announced. [Read full article »](#)

## EXPERT ANALYSIS

### 3 Elements Key To Success Of Recent Overtime Claims

Strauch v. Computer Sciences — a recent wage-and-hour class action in a Connecticut federal court — is an example of a successful challenge to an employer's classification policies, involving good facts and a judge and jury willing to embrace a deeper analysis, says Andrew Melzer of Sanford Heisler Sharp LLP. [Read full article »](#)

### 2019 Will Bring More Good News For Litigation Finance

Last year saw another round of year-over-year growth in litigation finance, as debates shifted from whether it should be permitted to how it can best be managed. The exciting news, says Alan Guy of Vannin Capital PCC, is that 2019 seems likely to bring more of the same. [Read full article »](#)

## LEGAL INDUSTRY

### Analysis

#### Shutdown 'A Real Challenge' For Cash-Strapped Courts

Federal courts have dipped into spare funds to remain open during the current government shutdown, but they may soon have to make tough staffing and litigation decisions if the political impasse continues past next week, when those reserves are expected to dry up. [Read full article »](#)

Winston & Strawn

### COMPANIES

A.H. Belo Corporation

AT&T Inc.

AbbVie Inc.

American Federation of Government Employees

American Federation of Labor and Congress of Industrial Organizations

AmerisourceBergen Corp.

BlackRock Inc.

BlueCross BlueShield of Oklahoma

Bob Evans Farms, Inc.

Chevron Corp.

Chipotle Mexican Grill, Inc.

Chiquita Brands International Inc.

Cigna Corp.

Communications Workers of America

DXC Technology Co.

DaVita Inc.

Deloitte Touche

Dollar Tree Inc.

Entergy Corp.

Fiesta Restaurant Group Inc.

Gilead Sciences Inc.

Groupe Danone

HBR Consulting LLC

Health Management Associates Inc.

Hillshire Brands Co.

Home Depot Inc.

Ingersoll-Rand Co.

International Association of Machinists and Aerospace Workers

Macy's Inc.

Mead Johnson Nutrition Co.

Mondelez International Inc.

NFL Enterprises LLC

National Right to Work Legal Defense Foundation

New York City Bar Association

Nissan Motor Co. Ltd.

Nokia Corporation

Nokian Tyres PLC

Panera Bread Company

Promontory Financial Group LLC

Sealed Air Corporation

Sonos Inc.

Starbucks Corporation

Taylor Bean & Whitaker Mortgage Corp.



## Cos. Face Rise In Need, Cost For Legal Work In Big US States

Corporate legal departments in some of the biggest states in the U.S. will have a greater need for legal services in the coming year and will also pay more for that work, according to survey data compiled by HBR Consulting. [Read full article »](#)

## Orrick Opens Boston Cyber Practice With Ex-Ropes Attys

Orrick Herrington & Sutcliffe LLP on Wednesday opened the doors of a new privacy and cybersecurity practice in Boston's Back Bay, led by a group of former Ropes & Gray LLP attorneys. [Read full article »](#)

## Booted Texas Law Student's Cheating Probe Suit Revived

An ousted first-year law student has persuaded a Texas appellate court to revive his suit alleging that the school's failure to thoroughly investigate a cheating scandal impacted his grade-point average and resulted in his dismissal. [Read full article »](#)

### Interview

## Law Firm Leaders: Reed Smith's Alexander Y. Thomas

Alexander "Sandy" Thomas has served as managing partner of global law firm Reed Smith LLP for nearly five years and has overseen the opening of three new offices. Here, Thomas discusses his views on the changing legal landscape and what he envisions for the future of his firm and the industry. [Read full article »](#)

### Feature

## The Top In-House Hires Of December

The notable legal department hires during the last month of 2018 included general counsel at Tesla and AbbVie, as well as chief legal officers at Sara Lee Frozen Bakery and Chipotle Mexican Grill. Here, Law360 looks at these and some of the other top in-house hires and promotions of December. [Read full article »](#)

### JOBS

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#### SENIOR DEPUTY GENERAL COUNSEL

Metropolitan Water District  
Los Angeles, California

#### Career Associate (Stamford Office)

McCarter & English, LLP  
Stamford, Connecticut

#### Employment Associate / NY mid-size law firm

Schoen Legal Search  
New York, New York

#### Employee Benefits and Executive Compensation Attorney

Bond, Schoeneck & King  
Syracuse, New York

#### L&E Partner -Mid-sized NYC law firm

Schoen Legal Search  
New York City, New York

Tribune Media Co.

U.S. Chamber of Commerce

Uber Technologies Inc.

United Therapeutics Corporation

Valley Health System

Vannin Capital PCC

Wells Fargo & Co.

WhiteWave Foods Co.

### GOVERNMENT AGENCIES

Federal Communications Commission

Illinois Department of Labor

International Chamber of Commerce

National Labor Relations Board

New Jersey Supreme Court

Office of the Comptroller of the Currency

Pennsylvania Attorney General's Office

Securities and Exchange Commission

Texas Attorney General's Office

U.S. Department of Justice

U.S. Department of Labor

U.S. General Services Administration

U.S. House of Representatives

U.S. Postal Service

U.S. Senate

U.S. Supreme Court

United States Bankruptcy Court for the Southern District of New York

United States Court of Appeals for the Third Circuit

United States District Court for the Eastern District of Pennsylvania

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**From:** [MeriTalk](#)  
**To:** [McFerran, Lauren](#)  
**Subject:** Short-Term Budget Bill to Avoid Shutdown | Ineffective Agency Cyber Approaches and more...  
**Date:** Thursday, December 20, 2018 7:02:38 AM

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## **MERITALK READ ALL ABOUT IT**

### **December 20, 2018**

#### **CONGRESS**

##### **Short-Term Budget Bill to Avoid Shutdown**

Senate Majority Leader Mitch McConnell, R-Ky., introduced a short-term spending bill that would fund the government through February 8, 2019, and avoid a government shutdown later this week.

[READ MORE](#)

#### **CYBER**

##### **Ineffective Agency Cyber Approaches**

A newly issued GAO report highlights gaps in implementing Federal guidance on cybersecurity at major agencies in fiscal year 2017, finding 35,277 cybersecurity incidents.

[READ MORE](#)

#### **IT MODERNIZATION**

##### **IT Modernization Plan on Track**

A recently updated IT modernization CAP goal action plan highlighted key milestones to track the progress of the plan and details whether a task has been completed, is on track, or is lagging behind.

[READ MORE](#)

#### **EVENT**

##### **FITARA Awards and Forum**

Join Congressman Gerry Connolly on Wednesday, February 6 as we honor Federal IT excellence at MeriTalk's second FITARA Awards. We will kick-off with an award ceremony recognizing Federal agencies leading the charge in Federal IT modernization based on the FITARA Scorecard 7.0. This complimentary event will be held from 5 p.m. to 7:30 p.m. at the Rayburn House Office Building— we hope to see you there.

[REGISTER](#)

#### **FEDERAL WORKFORCE**

##### **Workforce for the 21st Century**

The Federal government has made significant progress on the CAP goal of workforce improvement, but still has a ways to go, according to an update on Performance.gov.

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**From:** [The National Law Journal Afternoon Update](#)  
**To:** [McFerran, Lauren](#)  
**Subject:** Federal Courts Could Remain Open for Weeks During Shutdown  
**Date:** Friday, December 21, 2018 4:00:53 PM

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## The National Law Journal Afternoon Update

Dec 21, 2018

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### **Federal Courts Could Remain Open for Weeks During Shutdown**

By Ross Todd

A spokesperson for the Administrative Office of the U.S. Courts said operating in a shutdown "would not be business..." [Read More](#)



[COURT ADMINISTRATION](#) | [NEWS](#)

## **What Happens If Mystery DC Circuit Grand Jury Case Reaches the Supreme Court?**

By Tony Mauro

Would the justices clear their court chamber like the D.C. Circuit did, and leave the public and press outside, scratching... [Read More](#)



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### **Don't settle for inferior analytics**

Today the application of data-driven analytics is essential to the practice of law. But analytics are only as good as the data underneath, so the journey starts there. [READ MORE](#)



COURT ADMINISTRATION

### **Ruth Bader Ginsburg Hospitalized for Lung Surgery**

By Tony Mauro

The US Supreme Court said two "nodules removed during surgery were found to be malignant on initial pathology evaluation."... [Read More](#)



LAW FIRM COMPETITION | NEWS

### **Rep. Trey Gowdy to Join Nelson Mullins**

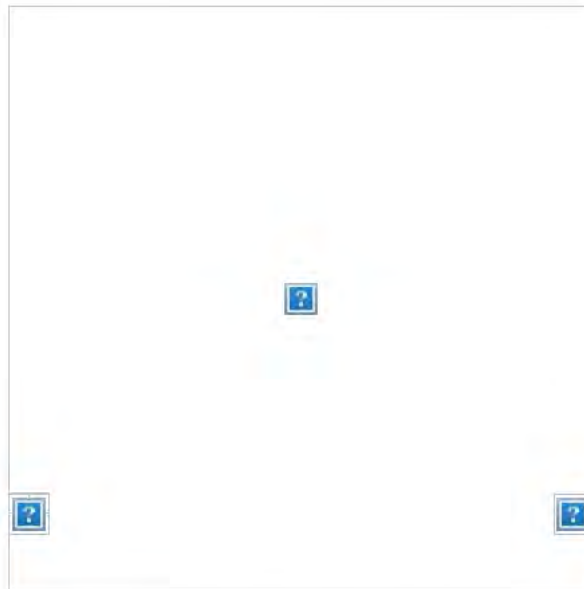
By Ryan Lovelace

The South Carolina congressman will join his



home state's largest law firm in the new year.

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#### CIVIL APPEALS

### **Roberts Aligns With Liberal Wing in Ruling Against Trump's Asylum Ban**

By Nate Robson | Mike Scarcella

The high court, 5-4, refused to stay a nationwide injunction. Several former government lawyers—including Carter...

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#### LAW FIRM COMPETITION | NEWS

### **Another Year, Another Spin Through the Legal Industry Revolving Door**

By Ryan Lovelace

Traffic between top posts in government and top law firms may only pick up in 2019.

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## **Maria Vullo Confirms She's Leaving DFS In February | New York Law Journal**

New York Law Journal

The move will set the stage for Gov. Andrew Cuomo to nominate a third person to head the agency since its creation in... [Read More](#)

## **Judge Emmet Sullivan Just Wrecked Trump's New Asylum Restrictions | Law.com**

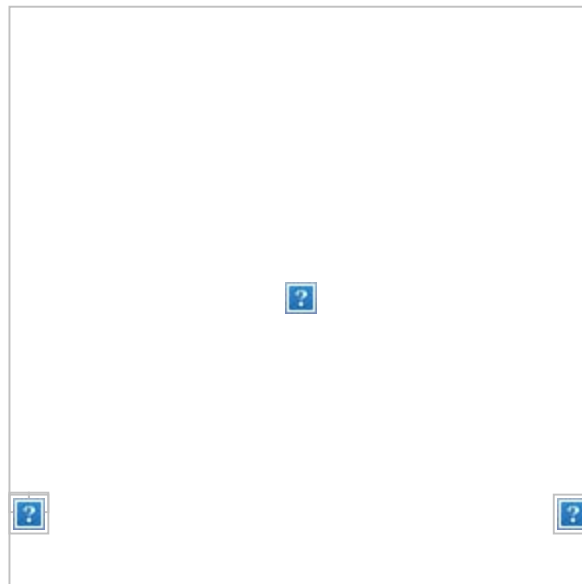
New York Law Journal

Because it is the will of Congress—not the whims of the executive—that determines the standard for expedited removal... [Read More](#)

## **Pa. Federal Judge Raises Broad Concerns About Arbitration's Fairness | The Legal Intelligencer**

The Legal Intelligencer

Even if individual arbitrators adhere to high standards we ignore reality if we forget that private arbitration services... [Read More](#)



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## **Attorneys - New York**

FARBER BROCKS & ZANE LLP – Garden City, New York

## **Insurance Coverage Attorney**

FARBER BROCKS & ZANE LLP – Garden City, New York

## **Attorney**

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**Subject:** Shutdown, Criminal Justice, New Mexico and Elf Narc  
**Date:** Saturday, December 22, 2018 12:16:53 PM

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## Straight from The Well

Saturday, December 22, 2018

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### EDUCATION AND ECONOMIC PRIORITIES

Interview with New Mexico State Speaker of the House Brian Egolf

HEGOL



Looking ahead to a new legislative term, The Well News had the opportunity to speak with New Mexico Speaker of the House Brian Egolf about his priorities and goals. In the November election, Democrat Michelle Lujan-Grisham was elected Governor, following eight years of republican leadership in the State as termed-out Susana Martinez left office. Democrats now control all statewide elected offices in New Mexico and have a 46-

24 advantage in the House.

[Read More](#)

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## BIPARTISAN CRIMINAL JUSTICE REFORM BILL SIGNED INTO LAW

### First Step Act

Friday, President Trump signed the First Step Act, a bipartisan criminal justice reform bill. The law makes sentencing and prison reforms to the U.S. Criminal Justice System, including corrections to ensure no person is sitting in prison serving more time than what they would get for the same offense today, while also allowing judges some discretion to issue sentences below the mandatory minimums for qualified low-level, non-violent drug offenders. Additionally, the First Step Act makes critical investments to improve prison conditions, including providing feminine healthcare products.

Members of the House and Senate on both sides of the aisle lauded the bill's signing and marks a major legislative victory for a Congress that has been essentially gridlocked.

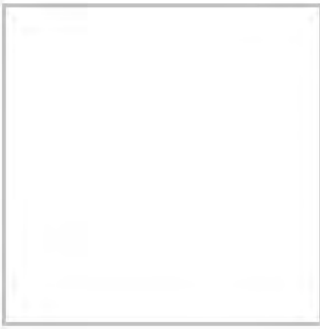
[Read Member Statements](#)

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## Shutdown Showdown

### [Government Shutdown Hits After Congress Adjourns Without a Deal on Trump's Border Wall](#)

Roughly one-quarter of the federal government officially shut down Friday night as Congress and President Donald Trump remained deadlocked over



money for his proposed border wall, the second time in less than a year that the nation's unyielding divisions over immigration have led to the closure of federal agencies.



### **With No Fix in Sight, Federal Agencies Prepare for a Shutdown**

A host of government agencies shut down at midnight, sidelining hundreds of thousands of federal workers as Congress and the White House remained deadlocked over President Donald Trump's desire to build a wall with Mexico.



### **How Much Border Wall Does \$5 Billion Buy?**

Homeland Security officials laid out the stakes in the budget brinkmanship that threatens a partial government shutdown late Friday: the \$5 billion the House has approved for a border wall would be enough for about 215 miles of barrier.

---

## **THE NARC ON THE SHELF**

Commentary by Sarah Willhelm Greathouse



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Thirteen years into this parenting gig I was pretty sure that I was acing low-key holiday parenting.

Kids get something big-ish from us, modest things from Santa (equality, ya know), a few books, maybe an experience, but, most importantly NO ELF ON THE SHELF.

The older two had asked, and a healthy combination of vagueness and procrastination got us through the holiday danger zone. This year I straight up told the 6YO that the Elf on the Shelf's whole job is to tattle on you to Santa.

And yet the 6YO asked, and asked, and asked. Mostly, he asked the correct parent – Daddy. Two days later, Amazon delivered us our very own Elf. (Dammit, Bezos!)

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## IN THE NEWS

- [Mattis Issues Rebuke to Trump as He Announces Departure as Defense Chief](#)  
By David S. Cloud
- [Supreme Court Turns Back Trump Plea to Immediately Impose New Asylum Policy](#)  
By David G. Savage
- [NC Alerted Feds of 'Efforts to Manipulate' Elections in Bladen Through Absentee Ballots, 2017 Letter Shows](#)  
By Paul A. Specht and Dan Kane
- [America's Psychologists Want You to Understand How Racism Holds Our Country Back](#)  
By Melissa Healy
- [Florida Deputy's Murder-Suicide Is Rare But Fits Pattern](#)  
By Howard Altman

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## Weekend Long Read

Why Beto O'Rourke's 254-County Strategy Flopped in the Texas Senate Race

US-NEWS-TEXASSENATE-OROURKE-3-AU



JoAnn Randall, a writer and rancher in Placid, a dot on the map 145 miles northwest of Austin in the geographical center of Texas, describes herself as a political independent.

Randall and her husband, Bill, a blues and rock guitarist, vote in the Republican primaries in McCulloch County because that's the only game in town.

But, this past election, JoAnn Randall was smitten with Beto O'Rourke.

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## CARTOONS OF THE WEEK

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**To:** [McFerran, Lauren](#)  
**Subject:** A Hypothetical President, Grammar Lessons & "Beautiful" Hovercrafts: SCOTUS Laugh Lines  
**Date:** Wednesday, December 26, 2018 4:00:48 PM

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## The National Law Journal Afternoon Update

Dec 26, 2018

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**CIVIL APPEALS** | NEWS

### **A Hypothetical President, Grammar Lessons & 'Beautiful' Hovercrafts: SCOTUS Laugh Lines**

By Marcia Coyle

Every now and then a U.S. Supreme Court justice, or an advocate, says something that brings laughter to the room. Here's...

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**LAW FIRM OFFICE LAUNCHES AND CLOSURES** | NEWS

## **DC Firms Might Lag in 2018 Results, But Optimistic for 2019**

By Ryan Lovelace

The dip in regulatory enforcement in Washington meant lower gains for firms in the capital. But some expect 2019 and...

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**GENDER DIVERSITY** | NEWS

## **Bar Flunkers, Kavanaugh and Failed Schools: Top Legal Ed Stories of 2018**

By Karen Sloan

From #MeToo and plummeting bar pass rates to higher enrollment and a digital LSAT, 2018 was a big year for law school... [Read More](#)



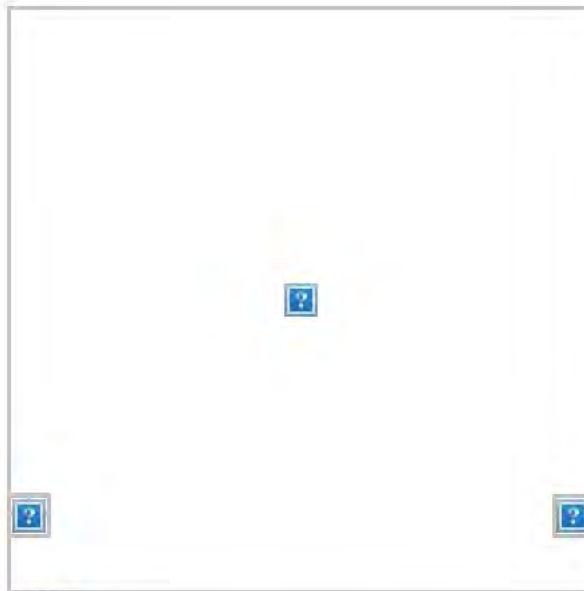
**CONSTITUTIONAL LAW** | NEWS

## **DOJ, With 'Regret,' Says Shutdown Complicates Court Orders and Deadlines**

By Mike Scarcella | Nate Robson

Here's what U.S. Justice Department lawyers are telling judges: "Although we greatly regret any disruption caused to... [Read More](#)





COMMUNICATIONS AND MEDIA

### **Suit Claims Federal Agencies Leaked Chinese-American Scientists' Info to Fox News**

By Zach Schlein

A federal lawsuit filed in the District of Columbia names the FBI, Department of Justice, Department of Defense and... [Read More](#)



LAW FIRM COMPETITION | NEWS

### **Another Year, Another Spin Through the Legal Industry Revolving Door**

By Ryan Lovelace

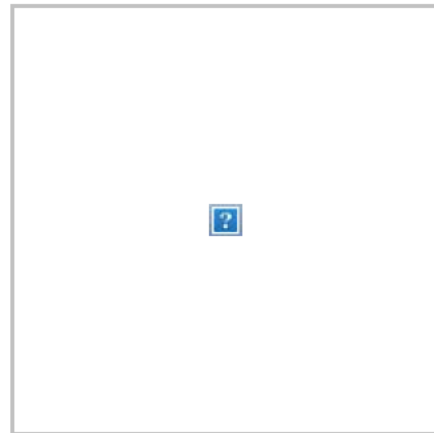
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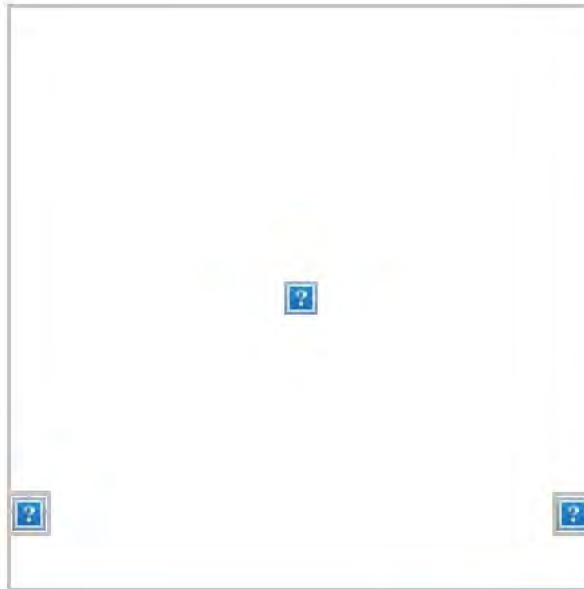
The professional body's plan to revise foreign lawyers regulation could be detrimental to its legal community and Hong... [Read More](#)

### **State Representative Sues a Second Time to Void Election | Daily Report**

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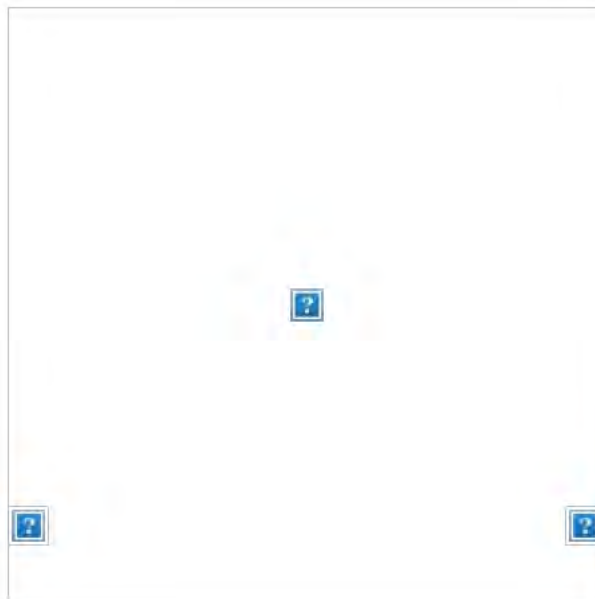
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## The National Law Journal Afternoon Update

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CAREER DEVELOPMENT | NEWS

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By Marcia Coyle | Tony Mauro

A collection of memorable U.S. Supreme Court stories, including our reports on clerk bonuses, Stephen Colbert's interview... [Read More](#)



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By Law.com Editors

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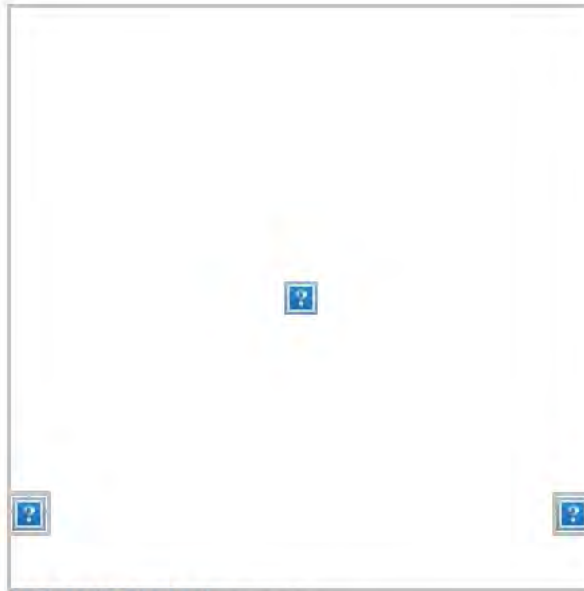
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## **Prominent Law Prof Pulled From Teaching Amid Sexual Misconduct Allegations**

By Karen Sloan

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By C. Ryan Barber

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### **Some Federal Judges Spurn DOJ's Push to Pause Cases During Shutdown**

By C. Ryan Barber | Mike Scarcella

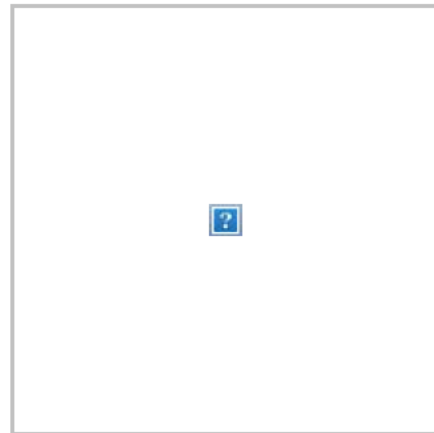
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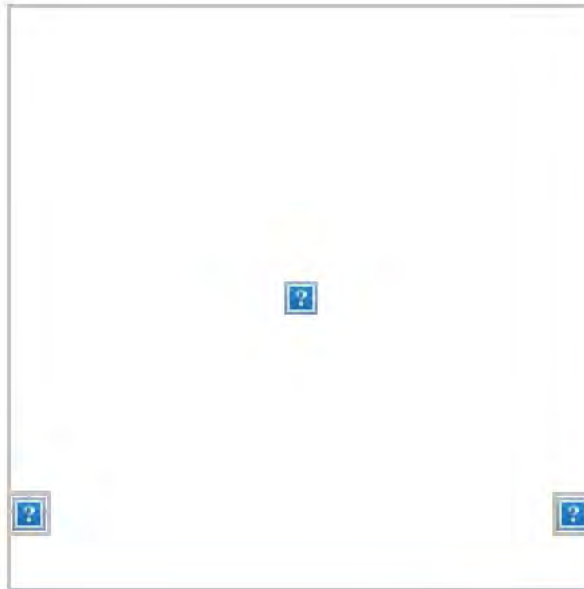
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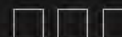
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## The National Law Journal Daily Headlines

Dec 27, 2018

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### A MESSAGE FROM THE EDITOR

In today's top story, we feature the cover story for NLJ's January issue: Big law partners and former federal judges discuss the importance of expansive criminal justice reform beyond the recently signed into law FIRST STEP Act. Not everyone is on board with proposed changes. And in other news, reporter Marcia Coyle has a round up of the best SCOTUS [laugh] lines from 2018.

– Mark Bauer, managing editor, The National Law Journal



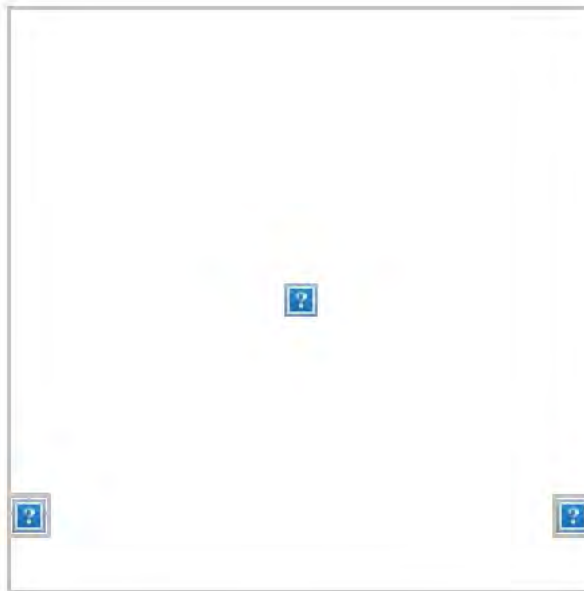
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By Andrew Denney

The FIRST STEP Act is aptly named for the series of changes advocates say need to be made for comprehensive criminal... [Read More](#)





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### **A Hypothetical President, Grammar Lessons & 'Beautiful' Hovercrafts: SCOTUS Laugh Lines**

By Marcia Coyle

Every now and then a U.S. Supreme Court justice, or an advocate, says something that brings laughter to the room. Here's...

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By Joshua R. Stein, Alejandro H. Cruz and Craig A. Newman

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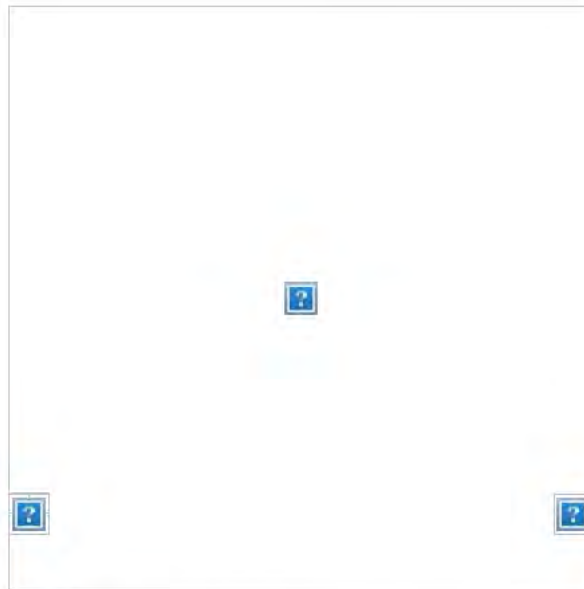
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By Ryan Lovelace

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By Mike Scarcella | Nate Robson



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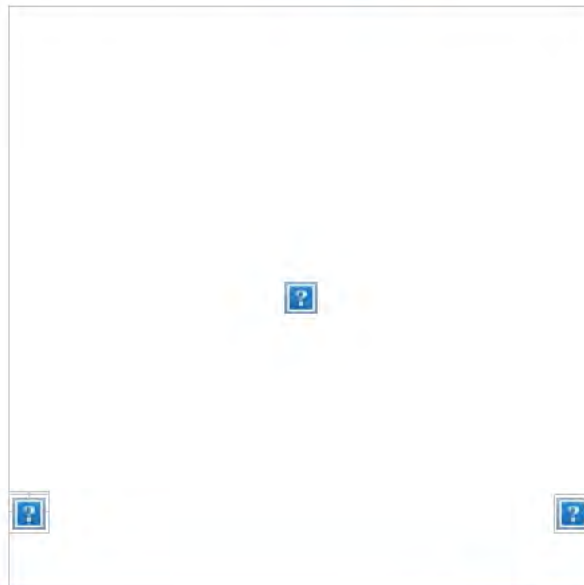
Daily Business Review

The Nason Yeager legal team secured the loan in a thriving South Florida industrial market. [Read More](#)

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New York Law Journal

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Dec 28, 2018

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By Mike Scarcella

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By Phillip Bantz

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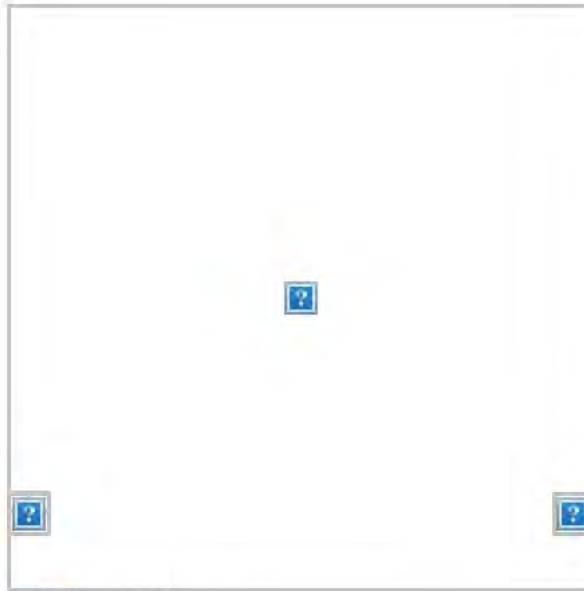
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By Robert Storace

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**CIVIL APPEALS** | NEWS

### **Pelosi Picks Ex-DOJ Appellate Vet Douglas Letter as House General Counsel**

By C. Ryan Barber

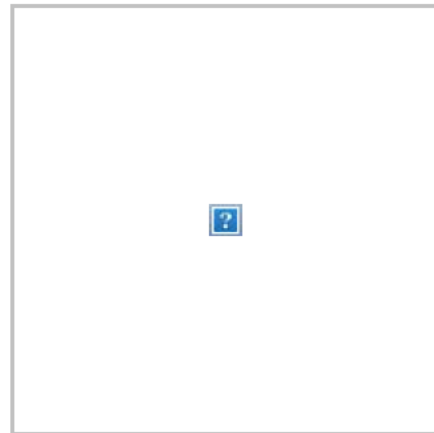
Letter replaces former Gibson, Dunn & Crutcher appellate partner Thomas Hungar, who was picked for the post in 2016... [Read More](#)



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### A MESSAGE FROM THE EDITOR

In today's top story, Morrin Manning's managing partner-elect Simon Malko—who will become the youngest leader in the firm's history—discussed D.C expansion, lateral hiring and more. And in other news, we have a roundup of the 15 most memorable SCOTUS stories from 2018.

– Mark Bauer, managing editor, The National Law Journal



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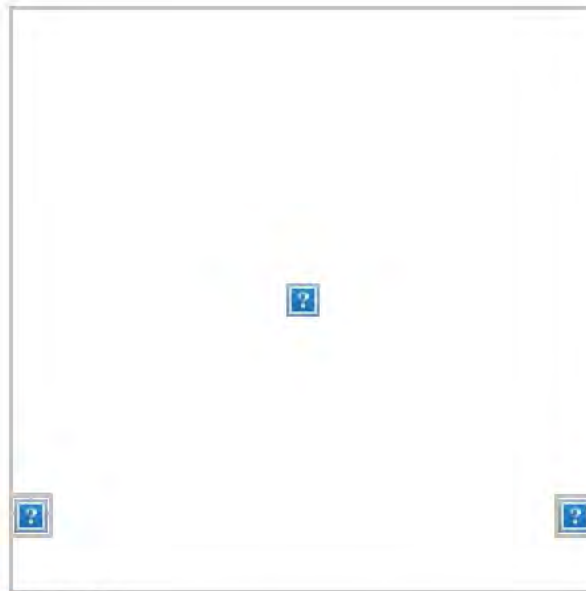
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By Marcia Coyle | Tony Mauro

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By Dan Clark

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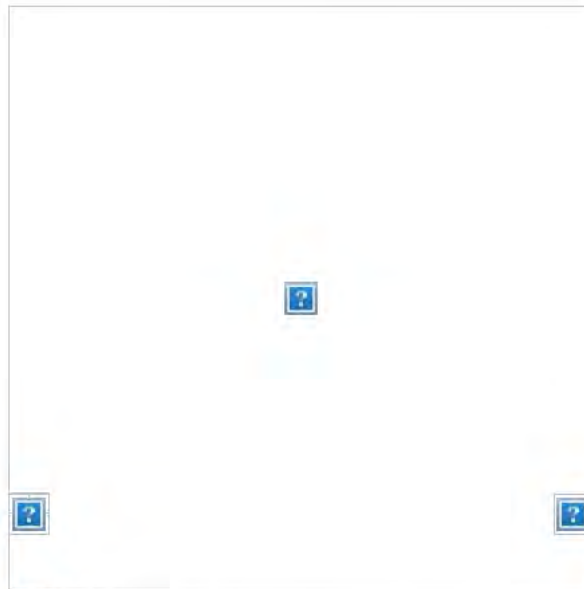


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By Karen Sloan

Marquette University launched an investigation into professor Paul Secunda, allegedly for an inappropriate relationship... [Read More](#)



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By Zack Needles

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By Mark Bauer

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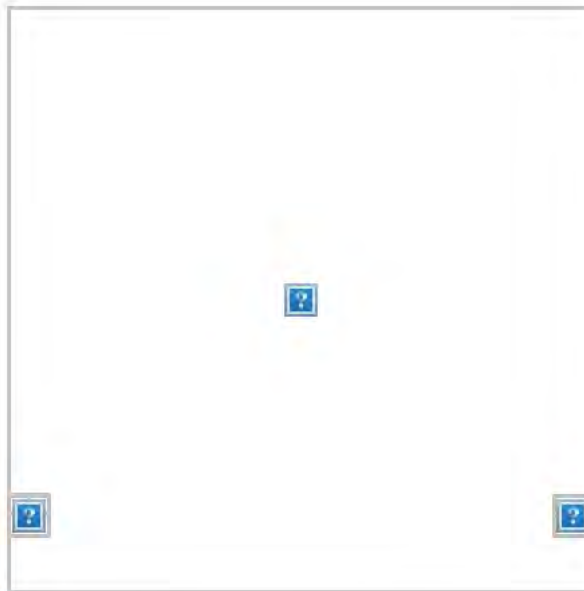
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By Cheryl Miller

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By Ryan Lovelace

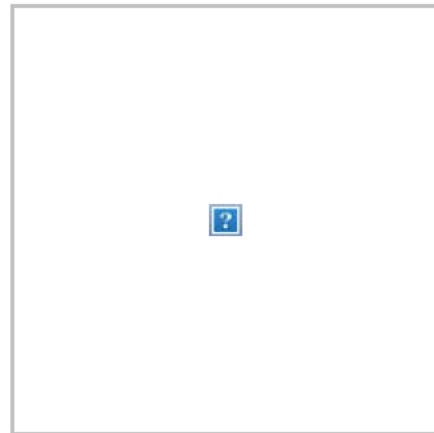
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## Straight from The Well

Wednesday, January 2, 2019

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*Read to the end of this email to learn more about an object 4 billion miles away, Ultima Thule.*

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### PART I: PEACE WITH HONOR

The Town That Raised Reagan Wants Out of the War On Drugs

*Opioids have overwhelmed rural Illinois. Desperate, the cops in Ronald Reagan's hometown have stopped arresting people and started getting them help. In an exclusive series, The Well News looks at "Safe Passage," a program that radically rethinks America's War on Drugs.*

## Ronald\_Reagan\_and\_Mother\_Nelle\_Reagan\_at\_Dixon\_Injun\_Summer\_Days



In October, 1982, President Ronald Reagan braced his fellow Americans for an expanded war. First Lady Nancy Reagan by his side, he promised the country the time of indecision had passed and that — full of lethal cunning though the enemy may be — victory was at hand.

“The mood toward drugs is changing in this country,” Reagan said, “and the momentum is with us. We’re making no excuses for drugs — hard, soft, or otherwise. Drugs are bad, and we’re going after them. As I’ve said before, we’ve taken down the surrender flag and run up the battle flag. And we’re going to win the war on drugs.”

Almost four decades on, the country’s “mood toward drugs is changing” again. Here in Dixon, just a few blocks from Reagan’s boyhood home, the police have struck his

battle flag.

“The war on drugs is not working,” Dixon Police Det. Jeff Ragan tells me. “If this was a corporation we’d already be bankrupt.”

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## THE ONE HUNDRED SIXTEENTH

United States Congress

The next Congress is scheduled to meet from January 3, 2019 to January 3, 2021. House Democrats plan to use their new majority to vote to end the U.S. government shutdown on Thursday. You can read more about all of the new members of the 116th in our new member profiles.

[Meet the New Members](#)

---

## IN THE NEWS

- [Hill Leaders to Meet With White House on Wednesday](#)  
By Jennifer Haberkorn and Sarah D. Wire
- [New Horizons' Rendezvous With Ultima Thule Went Off Without a Hitch, NASA Says](#)  
By Deborah Netburn
- [Migrant Families Shift to Dangerous Desert Crossings](#)  
By Molly Hennessy-Fiske

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## ISRAEL'S UPCOMING ELECTIONS - A CHECKLIST FOR AMERICAN DEMOCRATS

Commentary by Dan Cohen, Full Court Press Communications

Israelis will go to the polls to elect a new parliamentary government (The Knesset) and a Prime Minister on April 9. Unlike the US, it is not a binary choice between Democrat and Republican. Instead, voters can choose one from many parties – ranging from the far left to far right and everything in between, even those led by Israeli Arabs. This year at least 15 parties will be on the ballot.

The party with the most votes/seats gets first dibs on forming the government. The parties also play on multiple dimensions – as some can be far right on security but far left on the separation of church and state – or vice versa.

[Read More](#)

## EVERY DAY IS SOME DAY

Source: National Day Calendar



### **Some Day We Will Laugh About This Week**

Resolutions, diets, inspiration, and laughter...oh my!  
It's a good thing that it's Someday We'll Laugh About  
This Week. And it's a good thing this (work) week is  
one day shorter.

## **NEWS YOU CAN'T USE**

Source: IFLScience!

[extra\\_large-1546363629-cover-image](#)



[These Are The First Ever Images Of Ultima Thule, An Object 4 Billion Miles Away](#)

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**From:** [The National Law Journal Daily Headlines](#)  
**To:** [McFerran, Lauren](#)  
**Subject:** Top Appellate Lawyers Share What Practice Advice They Would Give Their Younger Selves  
**Date:** Wednesday, January 2, 2019 6:03:57 AM

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## The National Law Journal Daily Headlines

Jan 02, 2019

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### A MESSAGE FROM THE EDITOR

In today's top stories, top appellate lawyers from across the country tell what advice they would give their younger selves. And Pulitzer-winning author James Forman Jr. discusses what's required to dismantle the "criminal justice monster" that is mass incarceration.

– Mark Bauer, managing editor, The National Law Journal



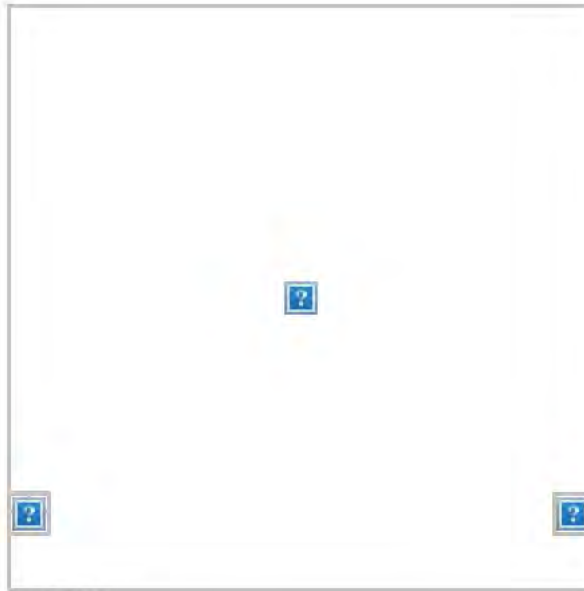
Q&A

### Top Appellate Lawyers Share What Practice Advice They Would Give Their Younger Selves

By ALM Staff

It's a good time of year to learn from the best.  
[Read More](#)





CIVIL RIGHTS | CONVERSATION

## **Dismantling the 'Criminal Justice Monster'**

By Mark Bauer

Pulitzer Prize-winning author James Forman Jr. discusses the state of criminal justice reform and the incremental policies... [Read More](#)



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By Law.com Editors

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RISK AND COMPLIANCE | NEWS

## **DC Circuit Judge Fumes About Timing of Big Labor Ruling**

By Mike Scarcella

D.C. Circuit Judge A. Raymond Randolph, writing in dissent, said his colleagues were too quick to rule on Obama-era... [Read More](#)



**LAWYER COMPENSATION - LAW FIRM**

### **What 11 Ex-Big Law Partners' Financial Disclosures Revealed in 2018**

By C. Ryan Barber | Mike Scarcella

A collection of our 2018 public-records reporting on the financial disclosures from Big Law partners who left, among... [Read More](#)



**CONSUMER PROTECTION | NEWS**

### **US Justice Department Recovered \$2.8 Billion From False Claims Act Cases in 2018**

By Phillip Bantz

The health care industry—and drug and medical device makers in particular—paid the most to settle fraud... [Read More](#)



## SAVE THE DATE

### **Legalweek New York 2019**

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DATE: Thursday, December 13, 2018 TIME: 2 p.m. EST | 11 a.m. PSTCOST:  
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## MORE FROM THE ALM NETWORK



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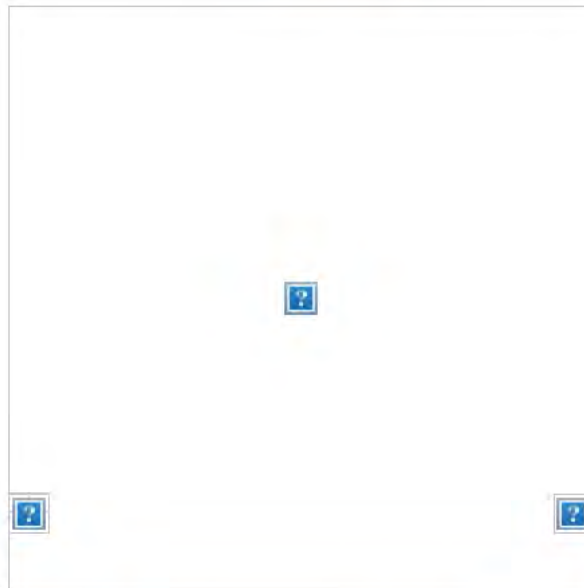
## **Chiesa Shahinian Dodges Sanctions in Labor Litigation Funding Dispute | New Jersey Law Journal**

A federal judge rules that sanctions against Chiesa Shahinian & Giantomasi are not warranted in a case where its fee... [Read More](#)

## **Some Federal Judges Spurn DOJ's Push to Pause Cases During Shutdown | New York Law Journal**

New York Law Journal

U.S. District Judge John Bates in Washington on Thursday was weighing the New York attorney general's opposition to... [Read More](#)



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**To:** [McFerran, Lauren](#)  
**Subject:** CISA, NIST Hammered by Shutdown | NSF OIG Flags Mobile Device Gaps and more...  
**Date:** Thursday, January 3, 2019 7:02:13 AM

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## **MERITALK READ ALL ABOUT IT**

### **January 3, 2019**

#### **SHUTDOWN**

##### **CISA, NIST Hammered by Shutdown**

DHS's newly-minted cybersecurity component agency CISA, along with NIST, have furloughed substantial chunks of their workforce as a result of the continuing partial Federal government shutdown.

[READ MORE](#)

#### **MOBILITY**

##### **NSF OIG Flags Mobile Device Gaps**

The OIG at the NSF found that NSF could improve its mobile device security after finding devices that were not enrolled in the agency's management program, and finding inappropriate apps on work devices.

[READ MORE](#)

#### **CLOUD COMPUTING**

##### **Labor Looks at Cloud**

The Department of Labor released a request for information on a proposal for a new financial management system, with an eye towards a potential move to the cloud and data analytics capabilities.

[READ MORE](#)

#### **IRS**

##### **IRS Fishing for Emerging Tech**

IRS said last month it established a new program called Pilot IRS that will look to investigate and acquire emerging technologies that will help the agency better serve taxpayers.

[READ MORE](#)

#### **CYBERSECURITY**

##### **HHS Releases Cyber Guidelines**

HHS released its Health Industry Cybersecurity Practices, a set of voluntary cybersecurity guidelines for the private sector that leverages the NIST Cybersecurity Framework to address cybersecurity issues across healthcare organizations of all sizes.

[READ MORE](#)

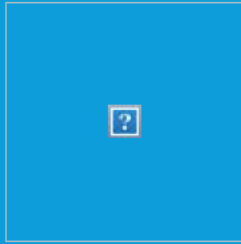
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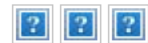
**From:** [Bloomberg Law Daily Labor Report](#)  
**To:** [McFerran, Lauren](#)  
**Subject:** First Move: Congress Begins New Session • Nominee Waiting Game Restarts  
**Date:** Thursday, January 3, 2019 7:10:19 AM

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What you need to know to start your day.

## Congress Begins New Session • Nominee Waiting Game Restarts



By [Patricio Chile](#)

### THE 116<sup>TH</sup> CONGRESS IS OPEN FOR BUSINESS

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A new session of Congress starts today with lawmakers and the White House still trying to come up with an agreement to end a partial government shutdown. Chris Opfer reports on some of the top labor and employment agenda items in the new year.

Minimum wages and LGBT discrimination protections are likely to highlight the legislation introduced by Democrats, who will also ramp up Trump administration oversight when they regain control of the House. Republican leaders in the Senate will again turn their attention to trying to move nominees for various administration posts.

### TRUMP NOMINEE WAITING GAME STARTS FRESH

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Senate lawmakers didn't reach a deal on pending nominations for leadership roles at the Labor Department and other agencies, which means the process for getting those jobs filled starts over when a new Congress is seated today, Tyrone Richardson [reports](#).



The U.S. Senate shut down without a deal to confirm many Trump nominees, including some key Labor Department picks.

Photographer: Andrew Harrer/Bloomberg

Those still waiting include Cheryl Stanton (Wage and Hour Division), Scott Mugno (Occupational Safety and Health Administration), and Gordon Hartogensis (Pension Benefit Guaranty Corporation). It's not clear whether President Donald Trump also will renominate Mark Gaston Pearce for the National Labor Relations Board. Meanwhile, Paige Smith [reports today](#) that the Equal Employment Opportunity Commission now doesn't have enough confirmed members for a quorum.

## OTHER STORIES WE'RE WATCHING

---

- The soon-to-be renamed **House Committee on Oversight and Reform** will oversee both the government and the private sector to better reflect its

“true jurisdiction,” Rep. Elijah Cummings (D-Md.), the committee’s incoming chairman, said Jan. 2. The panel “will investigate waste, fraud, and abuse” in government along with issues such as “the escalating prices of prescription drugs” and the opioid crisis, he said. We’re following the developments.

- It’s the time of year when many employers analyze what they pay employees to make sure they are paid fairly. In a Bloomberg Law Insight later today, Jonathan A. Segal, partner with Duane Morris, reveals eight common mistakes employers make when conducting their **pay equity** evaluations.
- The new year brings paid **parental leave** to New Mexico’s largest city, as well as to Kansas court employees, and New York employers face a minimum wage increase, with more to come. [Read more](#) in our “States of Work” weekly roundup of state and local labor and employment developments.
- **ADP** issues its December **employment report** at 8:15 a.m.
- The **Employment and Training Administration** puts out its weekly **job claims** report at 8:30 a.m.
- The **Institute for Supply Management** releases its December **manufacturing** report at 10 a.m.

## AROUND THE WEB

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- Banks and credit unions that cater to **federal workers** are readying **financial assistance**, including payroll advances and loans, for customers as the government shutdown continues, [CNN reports](#).
- A new Minnesota law taking effect in 2019 will help **first responders** dealing with **post traumatic stress disorder** get coverage through their workers’ compensation, [Fox 9 in Minneapolis reports](#).
- U.S. retailers are investing in technology and redesigned stores that can help improve **worker efficiency** amid a tight labor market, [the Associated Press reports](#).
- While workers in Vermont and New York enjoyed **pay raises** this New Year’s Day, some workers in New Hampshire say they’re struggling as the **minimum wage** in that state has lagged behind its neighbors, Burlington, Vt.’s [WCAX 3 reports](#).

For all of today’s Bloomberg Law headlines, visit [Daily Labor Report](#)



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**To:** [McFerran, Lauren](#)  
**Subject:** Morgan Lewis Extends IP Raid on McDermott With New DC Hires  
**Date:** Thursday, January 3, 2019 6:04:02 AM

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## The National Law Journal Daily Headlines

Jan 03, 2019

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### A MESSAGE FROM THE EDITOR

In today's lineup, Morgan Lewis continues to grow its intellectual property practice with new Washington, D.C. additions from McDermott Will & Emery. Ryan Lovelace reports. And a federal labor union recently filed a lawsuit against the United States government for failing to pay "essential" workers during the government shutdown. Tom McParland has the story. Next, William Barr, President Donald Trump's nominee for U.S. attorney general, is set to go before the U.S. Senate Judiciary Committee for a confirmation hearing on Jan. 15. Ross Todd reports.



Check out these stories and others below.

– Lisa Helem, Editor-in-Chief, The National Law Journal

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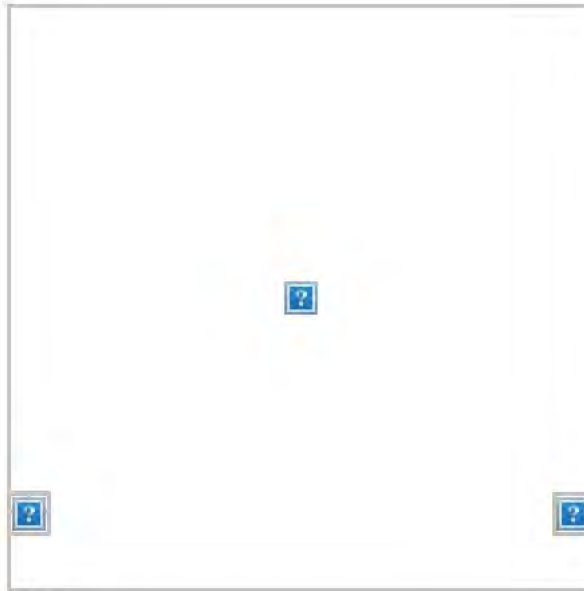
**LAW FIRM COMPETITION** | NEWS

### **Morgan Lewis Extends IP Raid on McDermott With New DC Hires**

By Ryan Lovelace

Hosang Lee is the latest IP lawyer to take his practice from McDermott to Morgan Lewis since last year. [Read More](#)





EMPLOYMENT LAW | NEWS

## **Federal Workers Sue Over Pay Denied During Ongoing Shutdown**

By Tom McParland

The lawsuit claims the government's refusal to pay essential employees who must work during the ongoing government shutdown...

[Read More](#)



LAW FIRMS - LARGE | NEWS

## **Judiciary Committee Sets Hearing Date for AG Nominee William Barr**

By Ross Todd

According to his questionnaire, Barr plans to follow Justice Department protocol when addressing potential conflicts... [Read More](#)



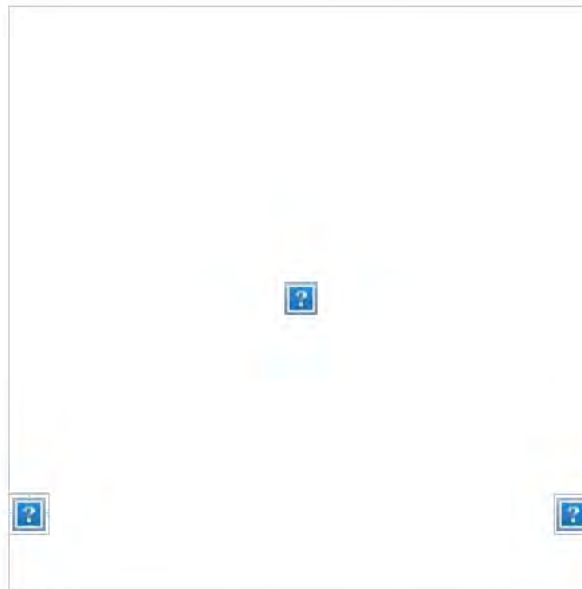
LITIGATION | NEWS

## **9th Circuit Orders Fresh Look at Alleged Government Misconduct in 'No Fly List'**

## **Case**

By Ellis Kim

The U.S. Court of Appeals for the Ninth Circuit, sitting en banc, lambasted the government's conduct in the case of... [Read More](#)



**EMPLOYMENT LAW** | NEWS

## **Fourth Cir. Reinstates Retaliation Claim for United Airlines Whistleblower**

By Michael Booth

The appeals court said there was sufficient evidence to show that United did, in fact, retaliate against plaintiff David... [Read More](#)



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## **Galveston Attorney Charged With Representing Clients He'd Never Met | Texas Lawyer**

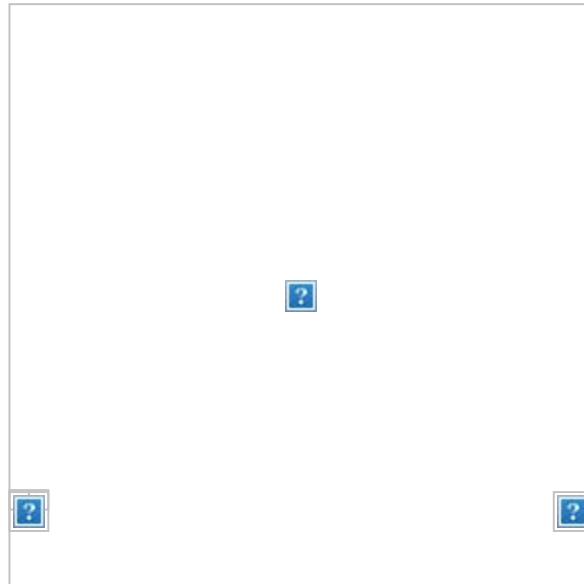
Texas Lawyer

A Galveston attorney has been indicted on charges of insurance fraud barratry and money laundering in connection with... [Read More](#)

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Texas Lawyer

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**To:** [McFerran, Lauren](#)  
**Subject:** Recently from CLASP: Paid family and medical leave, Government shutdown  
**Date:** Thursday, January 3, 2019 4:02:24 PM

**This week:** Paid family and medical leave, Government shutdown



## RECENTLY FROM CLASP

JANUARY 3, 2019



**Paid Family and Medical Leave is Critical for**



## Low-wage Workers and Their Families

93 percent of low-wage workers have zero access to paid family and medical leave. Most workers, especially those with low incomes, can't afford to take leave without pay. This explainer discusses how paid family and medical leave is critical to reducing and preventing poverty and economic insecurity for families who experience illness or have caregiving responsibilities.

[VIEW THE FACT SHEET](#)

---

### What a Shutdown Means for TANF

The partial government shutdown has halted federal spending for TANF, which funds cash assistance, job training, and other critical services for low-income families. However, the shutdown doesn't mean that there needs to be interruptions in TANF benefits.

[READ MORE](#)

---

### When a FIRST STEP is not enough

Last month, Congress passed the First Step Act with overwhelming bipartisan support. It's the first federal legislation in decades that attempts to address the nation's unacceptable mass incarceration problem, while also providing critical reentry resources to support returning citizens' access to employment, training, and support services. However, the First Step Act is not a full-scale criminal justice overhaul as some are suggesting.

[READ MORE](#)

## Career Pathways in Career and Technical Education

This brief provides the CTE community with an overview of adult career pathways, which are now defined the same way in three laws: Perkins V, the Workforce Innovation and Opportunity Act, and the Higher Education Act.

[READ MORE](#)

## CLASP in the News

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DECEMBER 28, 2018 | BLOOMBERG NEWS

### **Trump Immigration Proposal Could Face Credit Reporting Challenge**

DECEMBER 21, 2018 | MEDIA PLANET FOR USA TODAY

### **For Millennials, Jobs Don't Guarantee Financial Security**

DECEMBER 17, 2018 | INSIDE HIGHER ED

### **The Growth of Unmet Need**

DECEMBER 14, 2018 | ASIAN JOURNAL

### **Study: Asian American students have highest amount of unmet financial aid need**

DECEMBER 13, 2018 | SALON

### **Baby-snatching in Brooklyn: This is how we punish mothers for working**

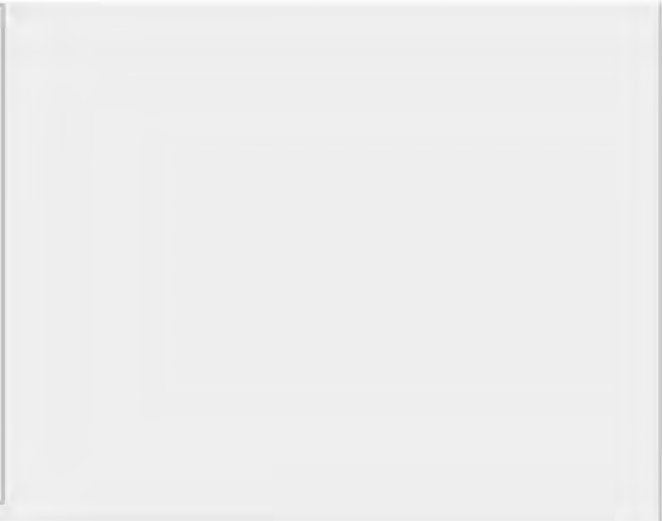
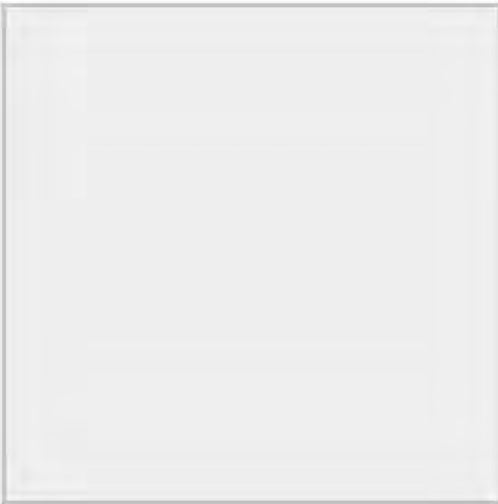
## Recent Events

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**On January 9**, Carrie Welton will be a panelist at a Capitol Hill briefing entitled “**Hungry in College: Food Insecurity on American Campuses.**” The briefing will explore a new Government Accountability Office report on how to increase access to nutrition in higher education. Register **here**.

**On January 7**, Judy Mortrude will be presenting at the **Policy Academy for Innovative Employment Strategies** in Arlington, VA, on career pathways strategies for TANF systems.



**On January 14**, Angela Hanks will be providing the U.S. Legal and Legislative Update on apprenticeships at the **International Foundation of Employee Benefit Plans' Institute for Apprenticeship, Training and Education Programs** in Miami, FL.

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**Subject:** SPECIAL EDITION: Welcome to the 116th Congress  
**Date:** Saturday, January 5, 2019 12:10:22 PM

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## Straight from The Well

Saturday, January 5, 2019

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**SPECIAL EDITION: Welcome to the 116th Congress**

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## FIRST DAY IN CONGRESS

The Well News Interviews Rep. Chrissy Houlahan (PA-06)

Capture



At the beginning of each new Congress, the new members are sworn into office, the Speaker of the House is chosen, the House Rules are adopted and there are numerous other first day agenda items to complete. Over the course of the next week, we will be releasing videos highlighting a few new members who were willing to discuss their first day and plans for the new year with us. Representative Chrissy Houlahan is a rising star. A third generation military veteran and Captain in the USAFR, she is poised to make her mark in the 116th Congress.

Watch Now

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BLUE DOGS WORK TO RESTORE FISCAL

## RESPONSIBILITY TO GOVERNMENT

### Pay-As-You-Go Rules

This week, Democrats took back the majority in the U.S. House of Representatives following 2018's historic midterm elections. One of the first orders of business? Establish rules for the 116th Congress. H.Res.6, "A Resolution Providing for the House Rules of the 116th Congress," included a measure giving Members of Congress additional time to read bills, created a select committee to modernize Congress and restored Pay-As-You-Go (PAYGO) rules.

PAYGO, which was last in place in 2010, requires that both mandatory spending and tax cuts must be offset to prevent increases in the national debt. House Republicans did away with the rule when their party took control of the House in 2011.

[Read More](#)

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## SENATORS MARK WARNER AND MARCO RUBIO INTRODUCE BIPARTISAN BILL

To Combat Chinese Tech Threats to National Security

## BIZ-TECH-CULTURE-TRADE-SIP



On Friday, bipartisan legislation was introduced by Vice Chairman of the Senate Select Committee on Intelligence Sen. Mark R. Warner (D-VA) and Committee member Sen. Marco Rubio (R-FL) to combat tech-specific threats to national security posed by foreign actors like China, while ensuring U.S. technological supremacy by improving interagency coordination across the U.S. government.

Specifically, the bill creates an Office of Critical Technologies & Security at the White House responsible for coordinating across agencies and developing a long-term strategy to protect against state-sponsored technology theft and risks to critical supply chains.

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## HUNDREDS OF TRUMP POLITICAL APPOINTEES TO RECEIVE \$10,000 PAY BOOST

### Amid Government Shutdown

Hundreds of Trump's political appointees, including Vice President Mike Pence, will reportedly receive a \$10,000 pay raise while hundreds of thousands of federal employees continue to be denied pay due to the prolonged government shutdown. Pay raises are scheduled to go into effect beginning today according to documents issued by the Office of Personnel Management.

House Majority Leader Steny Hoyer was incensed by the move, issuing the following statement: "It is outrageous that Vice President Pence and hundreds of President Trump's political appointees will each receive a \$10,000 raise while denying paychecks to 800,000 federal employees as they keep the government shut down...I call on Leader McConnell to allow the Senate to vote on the measures House Democrats passed last night to end the Trump shutdown, reopen government, and provide retroactive pay to those who have been forced to go without a paycheck as a result of the President's temper tantrum."

---

## IN THE NEWS

- [House Establishes Select Committee on Modernizing Congress in First Bipartisan Vote of New Session](#)  
By Lindsey McPherson
  - [A Handy Guide to the 2020 Presidential Campaign](#)  
By Adam Wollner
  - [Here's When the Government Shutdown Will Hurt Even More](#)  
By Kate Irby
  - [Trump, Democrats Meet Again on Shutdown But Remain Far Apart on His Border Wall Demand](#)  
By Eli Stokols and Jennifer Haberkorn
  - [No Deal on Shutdown But Talks to Continue Through the Weekend](#)  
By John T. Bennett
- 

## WEEKEND LONGREAD

Did Pentagon Ban on Guantanamo Art Create a Market for It?

US-NEWS-GUANTANAMO-ART-2-MCT



Hollywood actors Ben and Casey Affleck got one each. Pulitzer Prize-winning

historian Taylor Branch has four hanging in his home. The actress who played the “Gossip Girl” grandma wept, then bought one. Some students and teachers have acquired the artwork as well, including a former CIA analyst.

Call it blowback: A year after the Defense Department banned releases of art made by the 40 prisoners still at Guantanamo, detainee artwork that got out before the ban is emerging as a collectible with a bit of cachet.

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## CARTOONS OF THE WEEK

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**Subject:** As DIY Litigants Crowd The Docket, Courts Step In To Help  
**Date:** Monday, January 7, 2019 10:26:42 AM



*Access to Justice*

featured



### [As DIY Litigants Crowd The Docket, Courts Step In To Help](#)

Tens of thousands of people across the country are representing themselves in federal lawsuits, often because they can't afford an attorney. While those litigants can face insurmountable hurdles, a growing number of programs are trying to ensure they have their day in court.

[Read full article](#)

### [Famed Journal Lends Its Clout To Fighting Access Crisis](#)

The Academy of Arts and Sciences today published the winter edition of its renowned journal *Daedalus*, focused entirely on access to the civil justice system. Law360 spoke with its editors and contributors about why legal access is a problem that requires more than just lawyers to solve.

[Read full article](#)

### [4 Access To Justice Cases To Watch In 2019](#)

The dust hasn't settled from a year that included major decisions on issues like

**Monday, January 7, 2019**

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#### **COMPANIES**

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pretrial bail practices and veterans' right to bring class actions over denied benefits, but 2019 already promises big moments for access to justice cases on civil forfeiture and legal aid funding.

[Read full article](#)

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### Old Foe Of Criminal Sentencing Reform May Soon Oversee It

Attorney General nominee William Barr spent decades opposing some of the criminal justice changes that President Donald Trump signed into law last month — putting him at odds with senators responsible for his confirmation and raising concerns about how he will implement the reforms.

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### Shutdown Hits Federal Courts, Grows Immigration Backlog

Immigrants uncertain if they should show up for court dates and mounting case backlogs. Judges pausing civil disputes. Planned improvements to court facilities put on hold. As the shutdown of the government enters its third week, federal workers aren't the only ones whose futures have been thrown into uncertainty.

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### Ex-DOJ Heavy Hitters Urge Justices To Nix Murder Conviction

Six former top Justice Department leaders are urging the U.S. Supreme Court to vacate a murder conviction that they say poses an existential threat to the entire justice system, after a Mississippi prosecutor repeatedly blocked black citizens from serving on the defendant's six juries.

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### Vets Expand Scope Of Landmark Benefits Class Action

When Navy veteran Peter Boerschinger, 79, required emergency treatment for pneumonia and congestive heart failure, he assumed that the U.S. Department of Veterans Affairs would pick up the cost of the emergency room visit that his private insurance didn't pay for.

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#### All Access

### Sarah Geraghty Talks Bail Reform And Decriminalizing Poverty

Sarah Geraghty's used to making an impact with the Southern Center for Human Rights, but rarely is it put so bluntly as when the Atlanta mayor called out her group's influence in orchestrating the city's recent bail reform measures.

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#### Perspectives

### Stripping The False Premises From Civil Justice Problems

When I began researching access to justice in 2004, there were two settled beliefs about civil justice problems so obvious that few bothered to investigate them. Both turned out to be false, says Rebecca Sandefur, associate professor of sociology and law at the University of Illinois at Urbana-Champaign.

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## Perspectives

### Cy Pres Awards Are The Best Answer

The argument that cy pres awards violate the rights of absent class members is wrong on many levels and ignores the fact that prohibiting such distributions creates far more problems than it solves, says John Campbell, a professor at the University of Denver Sturm College of Law.

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## Federal Workers Miss Out on More Than \$2 Billion for Every Missed Paycheck During Trump's Shutdown

By [Saharra Griffin](#) and [Galen Hendricks](#)

President Donald Trump has suggested his shutdown could last “for months or even a year or longer” due to his insistence on extorting taxpayer money for a border wall that the American public overwhelmingly opposes—one that he swore Mexico would pay for. The new Democratic House majority



passed legislation to reopen the government, but there is no indication that the Republican-controlled Senate will agree to end this impasse soon. Senate Majority Leader Mitch McConnell (R-KY) has voiced his refusal to bring legislation to reopen the government to the Senate floor despite the fact that the chamber passed a similar deal unanimously just three weeks ago.

**[Trump's anger regarding the wall and the Senate's acquiescence to the president threatens to inflict damage on the nation's economy »](#)**

Because of the shutdown, nearly 800,000 federal workers have either been furloughed from their jobs without pay or been required to stay on the job without pay. As the shutdown drags into its third week, federal employees across the country are missing out on more than \$2 billion in total for each pay period that they go without a paycheck. Federal employees have generally received backpay after previous government shutdowns ended. But employees of federal contractors—typically low-wage roles—are much less likely to receive backpay. This means that these workers will not only suffer financial stress but also permanent monetary losses. As Trump continues to rationalize his shutdown by stoking fear, he is harming the very people who protect this country.

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## The National Law Journal Daily Headlines

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### A MESSAGE FROM THE EDITOR

The federal judiciary said Monday it will try to sustain paid operations amid the partial government shutdown through Jan. 18, a week later than initially estimated. Mike Scarcella has the story. And the U.S. Supreme Court is seeking the solicitor general's views on *HP v. Berkheimer*, a case that concerns when and how often courts can determine patent eligibility on the pleadings. Scott Graham reports.



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– Lisa Helem, Editor-in-Chief, The National Law Journal

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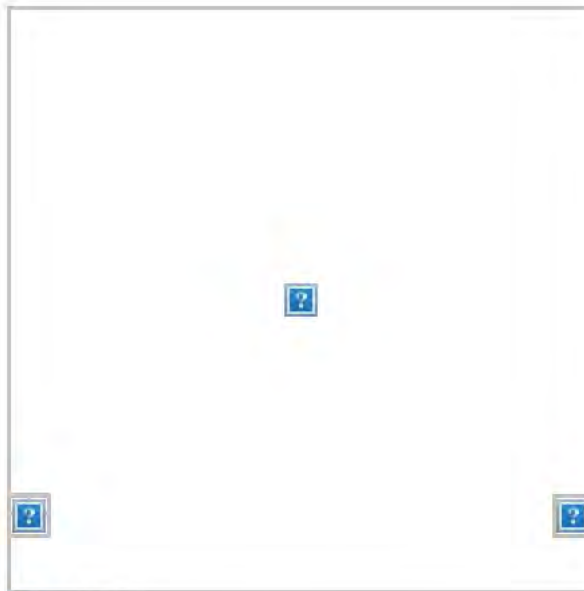
### **Federal Judiciary Says 'Limited Funds' Will Expire Jan. 18**

By Mike Scarcella

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## **High Court Seeks SG Views on Hot-Button Patent Issue**

By Scott Graham

The question in *HP v. Berkheimer* is whether patent eligibility is always a matter of law that can be resolved at an... [Read More](#)



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## **'Knock It Off': Judge Upbraids Reed Smith Partner Litigating Mueller Case**

By Ellis Kim

Reed Smith partner Eric Dubelier, who represents Concord Management and Consulting, raised the prospect that he might... [Read More](#)



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## **Commentary: The District Court Decision Striking Down the ACA Is a Model of**

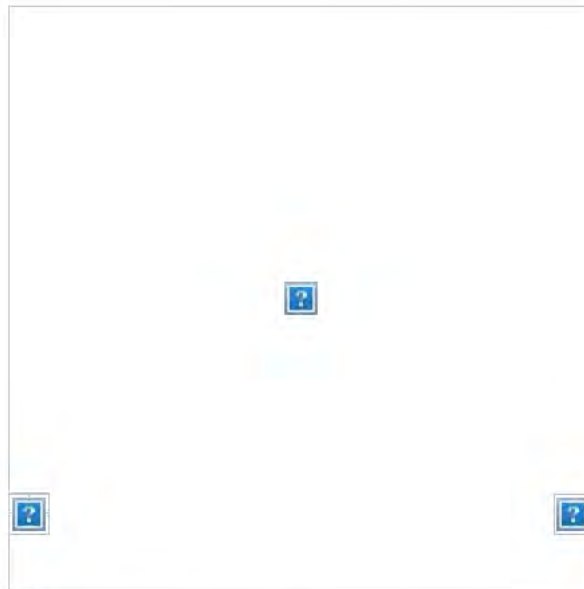


## **Restraint**

By Erin Hawley

The ACA is one of the most contentious statutes of our time, and that the district court refrained from issuing a nationwide...

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## **Justices Would Get Ethics Code Under Democrats' Bill**

By Tony Mauro | Marcia Coyle

The bill is the latest of repeated efforts by Congress to impose an ethics code on the Supreme Court, which is exempt... [Read More](#)



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## **Banking Nearly \$2M at Covington, Ky Rejoins Firm's Public Policy Group**

By Christine Simmons

Former Senator Jon Kyl has ping-ponged twice now between the U.S. Senate and Covington & Burling. [Read More](#)



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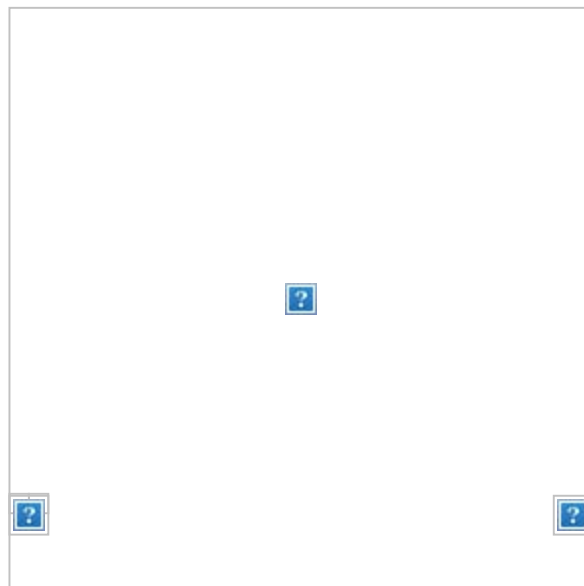
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##### **CDM Demand Has Room to Grow**

Agency demand for CDM security technologies has plenty of room for continued growth based on a GAO report, which showed mixed progress on agency deployment figures for the first half of 2018.

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#### **SHUTDOWN**

##### **A Technology Border Wall**

As the partial Federal government shutdown continues with little sign of compromise, the idea of employing more technology to create better border security has crept into greater prominence.

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#### **CYBERSECURITY**

##### **NCSC to Help Industry Against Threats**

The National Counterintelligence and Security Center announced a new campaign to spread awareness among private sector companies to protect against nation-state cyberattacks.

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##### **Veritas Public Sector Vision Day**

The time to prepare for the future state of data management is now. Join us on January 31 at Veritas Public Sector Vision Day and explore how to better leverage your data in the cloud era, learn strategies for controlling your most valued assets, and use data to transform the status quo. We will hear from leading IT thought leaders at USDA, Energy, SBA, Air Force, and more – you don't want to miss it. The event will be held at the Newseum in D.C. and attendees are eligible to receive 3.5 CPE credits. Register today to reserve your seat.

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##### **West Point Moving to Cloud**

The U.S. Military Academy at West Point will upgrade its email services to a cloud-based model, which the academy said will help facilitate projects and information sharing anywhere.

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## DAILY LABOR REPORT®

### Highlights

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#### TOP STORIES

##### [Labor Board's Joint Employer Rule Should Be Nixed, Democrats Say](#)

By Hassan A. Kanu

House Democrats asked the federal labor board to withdraw a proposed "joint employment" regulation, further complicating the controversial effort to reverse a key Obama administration policy.

##### [Judge Declines to Halt New DOL Wage Rule for Migrant Workers \(1\)](#)

By Porter Wells

A federal judge refused Jan. 9 to stop the U.S. Labor Department from rolling out a new wage floor for certain migrant farm workers.

##### [Southwest Beats Union in Fight Over Nonmember Plane Cleaners](#)

By Jon Steingart

Southwest Airlines Co. won its appeal arguing an arbitrator exceeded his authority when he ruled against it in a union grievance.

##### [Unpaid Federal Work During Shutdown Unconstitutional, Suit Says](#)

By Porter Wells

A union representing 150,000 executive branch employees sued the federal government Jan. 9, asking a court to declare unconstitutional the section of the Antideficiency Act that requires certain employees to work without pay indefinitely.

## DISCRIMINATION

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### [Whole Foods Must Face African Worker's Bias Claims at Trial](#)

By Patrick Dorrian

Whole Foods managers and other employees at a Manhattan store may have subjected a Guinea-born produce department worker to discrimination, harassment, and retaliation based on his national origin, a federal judge ruled Jan. 9.

### [Heterosexual Woman Tries to Revive Sex Orientation Bias Claims](#)

By Robert Iafolla

A heterosexual woman will try to convince a federal appeals court that she can sue her former employer for sexual orientation discrimination, adding a new element to the already-simmering legal debate over LGBT rights in the workplace.

### [Wells Fargo Worker's Expert Excluded From Disability Bias Trial](#)

By Patrick Dorrian

A Wells Fargo underwriter with carpal tunnel syndrome can't call an expert witness on voice recognition software at her upcoming disability discrimination trial, a federal judge ruled.

## WAGE & HOUR

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### [Au Pair Class Action Settled for \\$65.5 Million, Law Firm Says](#)

By Chris Dolmetsch



More than a dozen companies that served as sponsors for the U.S. Au Pair program agreed to pay \$65.5 million to settle claims that they colluded to suppress wages and discourage families from paying more.

### [Medtronic Can Keep Worker Repayment Dispute in State Court](#)

By Patrick Dorrian

A salesman for Medtronic Inc.'s spinal and cranial solutions arm must face in Minnesota state court claims that he failed to repay unearned commissions when he left the job, a federal appeals court ruled.

### [Stripper Should Be Scolded for Pay Suit, Judge Told \(Corrected\)](#)

By Jon Steingart

A woman and her lawyers should be penalized for filing a “baseless” lawsuit alleging she was underpaid by a strip club because she never worked there, the venue said in a motion for sanctions.

### [Nurse's Extra Weekend Pay Not Protected by Federal Law](#)

By Patrick Dorrian

The University of Arkansas for Medical Services didn't violate the Family and Medical Leave Act when it stopped paying a nurse 30 percent more for weekend work after she missed more than six shifts for health reasons, a federal judge ruled.

### [Shutdown Tax Refunds Could Trigger Lawsuits From Unpaid Workers](#)

By Carolina Vargas

The IRS's decision to process tax refunds during a partial government shutdown would require the IRS to call employees back to work without pay and raise the possibility of more shutdown-related lawsuits against the Trump administration.

## **HARASSMENT & RETALIATION**

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## [Ala. Softball Coach Heads to Trial Over Suspension](#)

By Porter Wells

An Alabama State University women's softball coach can take her claim that she was treated differently during her suspension than a similarly situated male baseball coach to a jury, a federal judge has ruled.

### **STATE & LOCAL LAWS**

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## [NYC's De Blasio Seeks Paid Vacation Law for Private Workers \(1\)](#)

By Henry Goldman

New York Mayor Bill de Blasio proposed a law requiring private businesses with five or more employees to give at least 10 days of paid vacation a year, a step that would extend the benefit to about 500,000 full- and part-time workers who currently don't have it.

## [Arizona Group Fights Mandatory State Bar Membership](#)

By Brenna Goth

An Arizona free-market think tank is asking the state Supreme Court to eliminate mandatory membership in the state bar association, arguing it violates the free-speech rights of attorneys.

### **LABOR RELATIONS**

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## [Los Angeles Teachers Push Planned Strike Back to Jan. 14](#)

By David McAfee

Tens of thousands of Los Angeles teachers had planned to strike Jan. 10, but that date has been pushed back four days due to legal complications, according to their union.

## [National Grid Gripes Piled Up During Lockout of USW Workers](#)

By Andrew Wallender

The man calling the Massachusetts gas regulator on Aug. 30 said a temporary contractor for National Grid PLC, had hit a live gas pipe while installing a water line and couldn't find the pipe's shut off.

## HEALTH CARE & BENEFITS

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### [Georgetown Joins NYU, Penn in Beating Retirement Plan Suits](#)

By Jacklyn Wille

Georgetown University is the latest school to defeat a lawsuit challenging the fees and investment options in its retirement plan.

### [Lockheed Nuclear Plant Workers Lose Pension Suit Against Feds](#)

By Jacklyn Wille

Lockheed Martin Corp. retirees who worked at a nuclear plant in Hanford, Wash., can't sue the federal government over an alleged pension cut.

## SAFETY & HEALTH

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### [Contractor Faces \\$40K in Fines Over Electrocution Death](#)

By Christopher Brown

A Maryland-based electrical contractor is facing nearly \$40,000 in fines for workplace safety violations following the death of a worker who was electrocuted while installing solar panels on July 24, 2018.

### [Miner Death Rate Drops to Near Record Low, Safety Agency Says](#)

By Fatima Hussein

Twenty-seven mining fatalities occurred in 2018, the second lowest number ever recorded, according to the Mine Safety and Health Administration.

### [Royal Caribbean Delayed Care for Stricken Staffer, Suit Says](#)

By Steven M. Sellers

Royal Caribbean Cruise Line Ltd. waited more than a week to hospitalize a crewman diagnosed with severe pneumonia, a new lawsuit alleges.

### [Worker Hazards Could Rise if High Court Allows Va. Uranium Mine](#)

By Fatima Hussein and Sam Pearson

The potential hazards to workers of uranium mining could become a bigger concern if a Supreme Court case allows a Virginia company to move forward with a mine.

## **ALSO IN THE NEWS**

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### [Trump Says All Federal Workers Will Be Paid](#)

By Margaret Talev and Kathleen Miller

"They're all going to get the money," President Trump said while speaking about federal government workers affected by the partial government shutdown.

### [New Work Suits: LexisNexis, Lowe's Sued Over Leave Bias Claims](#)

By Cynthia Harasty

LexisNexis discriminated against a former legal editor for taking time off to care for her ailing mother, and Lowe's unlawfully issued a former employee a final warning for working a reduced schedule resulting from her use of approved leave, the workers allege in lawsuits filed in federal courts last week.

### [Morgan Stanley Said to Eliminate Dozens of Jobs in Annual Review](#)

By Sonali Basak

Morgan Stanley dismissed some of its under-performers, with cuts occurring throughout the fixed-income, equities and research divisions, according to a person familiar with the matter.

### [State Street Is Said to Lay Off 15% of Senior-Management Ranks](#)

By Sabrina Willmer

State Street Corp.'s new chief executive officer is executing on a plan to whittle the management ranks.

### [Asness's AQR Cuts Jobs After the Quant Firm's Dismal Year \(1\)](#)

By Sonali Basak and Erik Schatzker

AQR Capital Management, the giant quantitative fund manager run by Cliff Asness, is cutting jobs after a year of poor performance.

## **LATEST CASES**

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### [Case: Discrimination/Reinstatement \(D.D.C.\)](#)

The U.S. Department of Agriculture complied with a reinstatement order when it assigned a female employee who was found by a jury to have been demoted from a position as an agency civil rights deputy director due to sex discrimination to a different deputy director position dealing with civil rights. Both positions are at the Senior Executive Service level with the same pay grade and benefits, and her status and responsibilities are roughly equivalent, the court said. The case is *Banks v. Perdue*, 2019 BL 6695, D.D.C., 07-cv-01807 (APM), 1/9/19.

### [Case: Wage & Hour/Damages \(S.D.N.Y.\)](#)

A New York restaurant may not use the tip credit for purposes of calculating the unpaid minimum wages, overtime, and spread-of-hours pay it owes to two of its employees, because it didn't offer any evidence that they provided them with proper written notice that it would apply the tip credit to their wages. The case is *Gallego v. Adyar Ananda Bhavane Corp.*, S.D.N.Y., No. 16-CV-4631 (AJN), 1/8/19.

### [Case: Wage & Hour/Arbitration \(D.D.C.\)](#)

A Washington, D.C., family services agency may not compel an employee to submit her claim for unpaid minimum and overtime wages to arbitration, because the agency failed to bring up the existence of an arbitration agreement for six months, including in its response to her complaint, and she

incurred expenses in preparing for mediation before a judge. The case is *Lee v. PSI Servs. III, Inc.*, 2019 BL 5417, D.D.C., No. 18-1286 (BAH), 1/8/19.

#### [Case: Individual Employment Rights/Whistleblower \(11th Cir.\)](#)

A former employee of Wells Fargo in Fort Lauderdale, Florida, can't convince the Eleventh Circuit to order the bank to reinstate her to her position as a personal banker. She claimed that her firing rendered her unemployable in the financial services arena, pushed her into poverty, and led to depression. The appeals court found the type of harms she was asserting could be compensable with a monetary remedy, without resorting to injunctive relief. The case is *Berber v. Wells Fargo Bank, N.A.*, 2019 BL 5678, 11th Cir., 18-11102 Non-Argument Calendar, 1/8/19

#### [Case: Wage & Hour/Overtime Exemption \(W.D. Mo.\)](#)

Managers of an RV park near Lebanon, Missouri, aren't subject to the recreation and amusement exemption from federal overtime requirements, because nearly all the park's business came from renting campground sites, and its pool and fishing pond existed primarily to attract customers to use the camp, rather than generate income. The case is *Karnes v. Happy Trails RV Park, LLC*, 2019 BL 6111, W.D. Mo., 2:16-CV-04309-MDH, 1/8/19.

#### [Case: Individual Employment Rights/Contracts \(8th Cir.\)](#)

A former employee of Medtronic, Inc. waived his right to remove the company's lawsuit against him in a Minnesota state court alleging that he failed to repay Medtronic the difference between his earned commissions and the payments he had already been advanced, when he left the company's employ during a three-year contractual "guarantee period" established in a repayment agreement, because a separate employee agreement he signed was also part of his contract and it contained an enforceable forum selection clause. The case is *Medtronic Sofamor Danek, Inc. v. Gannon*, 2019 BL 6692, 8th Cir., 17-3302, 1/9/19.

#### [Case: FMLA/Retaliation \(11th Cir.\)](#)

An employee may not proceed with her claim that a health system in Georgia fired her in retaliation for taking leave under the Family and Medical Leave Act.



She was fired after she violated the drug policy and came to work impaired and she didn't show that her FMLA leave was a factor in the firing decision, the court said. The case is *Connelly v. Wellstar Health Sys., Inc.*, 2019 BL 6727, 11th Cir., 18-11217 Non-Argument Calendar, unpublished 1/9/19.

#### [Case: Discrimination/Arbitration \(N.J. Super. Ct. App. Div.\)](#)

A fired manager for Town Sports International Holdings, Inc. in New Jersey must arbitrate her racial discrimination and retaliation claims, even though her employment offer letter didn't mention arbitration. The letter indicated that her employment was subject to all company policies, the company had a dispute resolution program requiring arbitration, she was aware of the arbitration policy because she electronically signed an acknowledgment that she was subject to the program and she dealt with it in her capacity as a manager, and her continued employment constituted agreement to arbitration, the court said. The case is *Brownlee v. Town Sports Int'l Holdings, Inc.*, N.J. Super. Ct. App. Div., A-0816-17T4, unpublished 1/8/19.

#### [Case: Discrimination/Retaliation \(N.D. Ala.\)](#)

A police officer may proceed with his claim that the city of Tuscaloosa, Alabama didn't promote him to a field training officer position because he participated in a co-worker's pregnancy discrimination case. Questions remains about whether or not the city's explanations for not promoting him, including that he was unwilling to change shifts, were pretext for retaliation, the court said. The case is *Hicks v. City of Tuscaloosa*, 2019 BL 6104, N.D. Ala., No. 7:16-cv-01507-LSC, 1/8/19.

#### [Case: Discrimination/Promotion \(D. Idaho\)](#)

A fish culturist for the Idaho Department of Fish & Game was denied a trial on her claims that she was rejected from nine promotions and transfers because of her sex, but she can go to trial with a state law claim that she was given a negative performance evaluation because of retaliation. The promotion and transfer rejections occurred more than a year before she filed a state civil rights complaint and more than 300 days before her EEOC charge, which meant these claims were time-barred, but although the IDFG argued that a poor performance review can't be retaliatory if an employee was issued a



negative review before complaining, the employee provided evidence that she'd improved her performance since the earlier evaluation and was issued another poor review in spite of her improvement. The case is *Dorsch v. Idaho Dep't of Fish & Game*, D. Idaho, 1:17-CV-428-BLW, 1/8/19

#### [Case: Wage & Hour/Settlement Agreements \(S.D.N.Y.\)](#)

A New York pizza restaurant and one of its employees must revise the claims-release provision of their agreement to settle his spread-of-hours and unpaid overtime claims, because it broadly releases all claims that the employee may have against the restaurant from before the date of the settlement, rather than limiting it to the claims at issue. The case is *Aguirre v. Torino Pizza, Inc.*, 2019 BL 6073, S.D.N.Y., No. 18-CV-2004 (KMK), 1/8/19.

#### [Case: Wage & Hour/Overtime Exemption \(M.D. Fla.\)](#)

A chef for a Florida restaurant may go to trial on his claim that he was misclassified as an overtime-exempt managerial employee, because there is a dispute as to whether his duties were primarily focused on creating menus and overseeing the kitchen staff, or ordering supplies and preparing food. The case is *Erling v. Am. Grille With Sushi LLC*, 2019 BL 5726, M.D. Fla., No. 2:17-cv-350-FtM-29MRM, 1/8/19.

#### [Case: FMLA/Retaliation \(N.D. Ala.\)](#)

A police officer may proceed with his claim that the city of Tuscaloosa, Alabama, didn't promote him to a field training officer position in retaliation for participating in a co-worker's Family and Medical Leave Act discrimination case. Questions remain about whether or not the city's explanations for not promoting him, including that he was unwilling to change shifts, were pretext for retaliation, the court said. The case is *Hicks v. City of Tuscaloosa*, 2019 BL 6104, N.D. Ala., No. 7:16-cv-01507-LSC, 1/8/19.

#### [Case: Disability Discrimination/Expert Testimony \(D. Colo.\)](#)

An expert in voice recognition software can't testify at the trial of a Wells Fargo underwriter's disability bias claims that her poor work performance was due to lack of accommodation for her carpal tunnel syndrome that impeded her ability to type, because the expert never spoke to the employee about her limitations

or workplace needs and failed to determine whether the bank's systems were compatible with VRS programs. The case is *Hobdy v. Wells Fargo Bank, N.A.*, 2019 BL 6527, D. Colo., 17-cv-1168-WJM-KMT, 1/8/19.

#### [Case: Discrimination/Discipline \(D.D.C.\)](#)

A male contracting officer in a division of the Department of Justice's Inspector General's Office won't go to trial on his claim that he was suspended for seven days because of sex discrimination or retaliation. The department said that he was suspended for having inappropriate sex-related conversations with colleagues and obstructing their work in retaliation for complaining about him, and the court found nothing to suggest that the department didn't reasonably believe these reasons based on the employee's blanket denial, or his allegations of procedural defects, because his second-level supervisor recommended a relatively light punishment, and an assistant inspector general set forth "in painstaking detail" why he thought the punishment was fair. The case is *McCulough v. Whitaker*, 2019 BL 6363, D.D.C., 14-296 (RDM), 1/8/19.

#### [Case: FMLA/Retaliation \(E.D. Pa.\)](#)

A medical secretary may not proceed with her claim that Temple University Hospital in Pennsylvania fired her in retaliation for taking leave under the Family and Medical Leave Act. The secretary was fired after she violated the Health Insurance Portability and Accountability Act and she didn't show that her FMLA leave was a factor in the firing decision, the court said. The case is *Hernandez v. Temple Univ. Hosp.*, 2019 BL 5506, E.D. Pa., No. 17-4381, 1/8/19.

#### [Case: Disability Discrimination/Discharge \(E.D. Ark.\)](#)

A disabled University of Arkansas hospital nurse can't go ahead with her disability bias and retaliation claims after she was fired for claiming a 30 percent weekend shift pay differential that she was no longer eligible for after taking medical leave, because she didn't link the loss of extra pay to her disability given that six absences in a six-month period for any reason disqualified employees working under the weekend option contract from claiming the differential. The case is *Flowers v. McCartney*, 2019 BL 5991, E.D. Ark., 4:17CV00604 JLH, 1/8/19.

### [Case: Discrimination/Hostile Work Environment \(N.D. Ala.\)](#)

A female nurse for QCHC can't go to trial on a hostile work environment claim based on purported sexual harassment by a police officer who worked at the same jail but wasn't employed by QCHC. She alleged that he called her "hottie nurse," "my 44," and gave her a shoulder massage on four occasions, but the court said that although his conduct may have been frequent and inappropriate, he never exposed himself to her or described any graphic sexual encounters, and his conduct wasn't severe or pervasive enough to alter her employment conditions. The case is *Thompson v. QCHC, Inc.*, 2019 BL 6099, N.D. Ala., 2:17-cv-01456-ACA, 1/8/19.

### [Case: Discrimination/Promotion \(W.D. Okla.\)](#)

A black Asian employee of the Federal Aviation Administration didn't show that she was passed over for a promotion to deputy director because of racial discrimination, a court said. The FAA alleged that the white applicant chosen was the most qualified, and that she was considered an expert in several areas because of her experience, and the court said that the suing employee failed to show that the FAA didn't believe its reasoning based on the selected applicant's not working for the FAA before, or employee complaints about the selecting supervisor creating a hostile work environment, because these complaints didn't indicate disparate treatment of any racial group. The case is *Lee-Fanning v. Chao*, 2019 BL 6184, W.D. Okla., CIV-17-878-G, 1/8/19.



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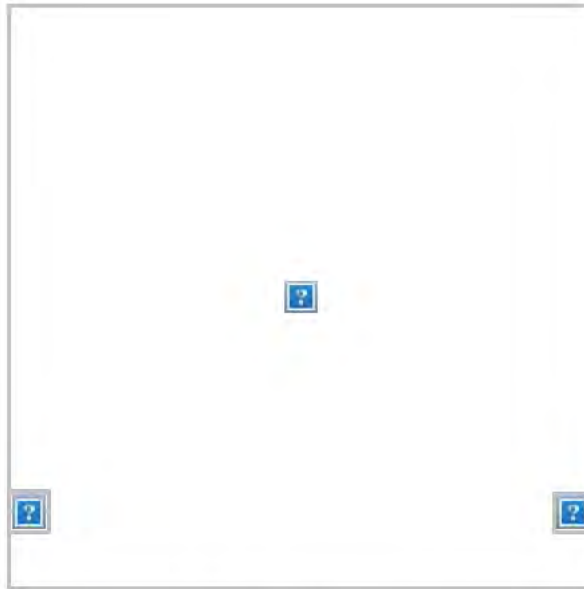
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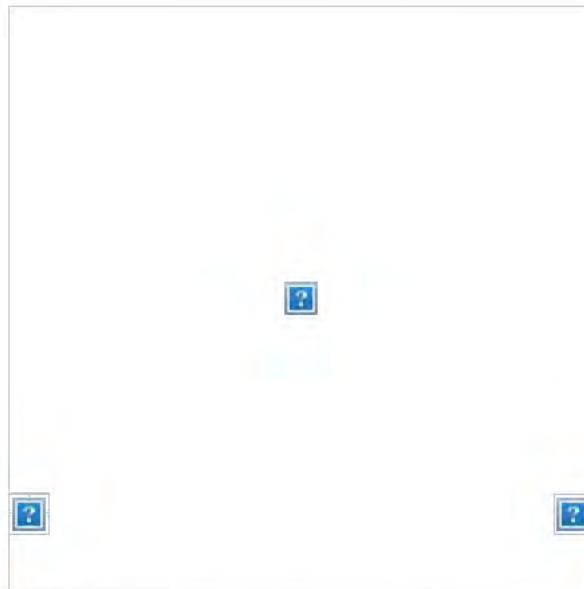
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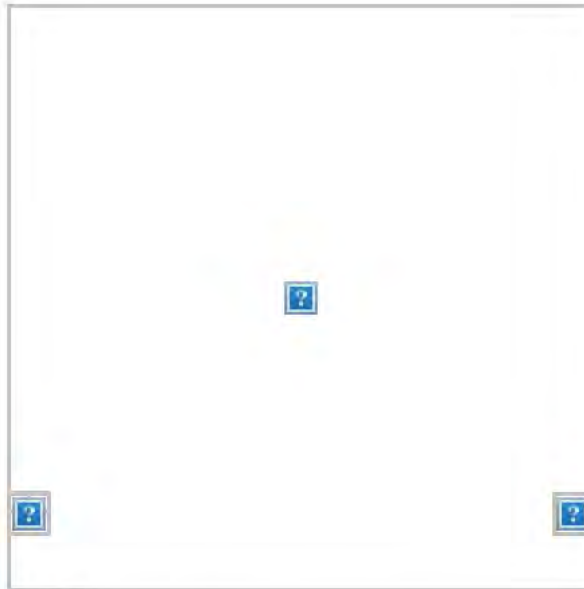
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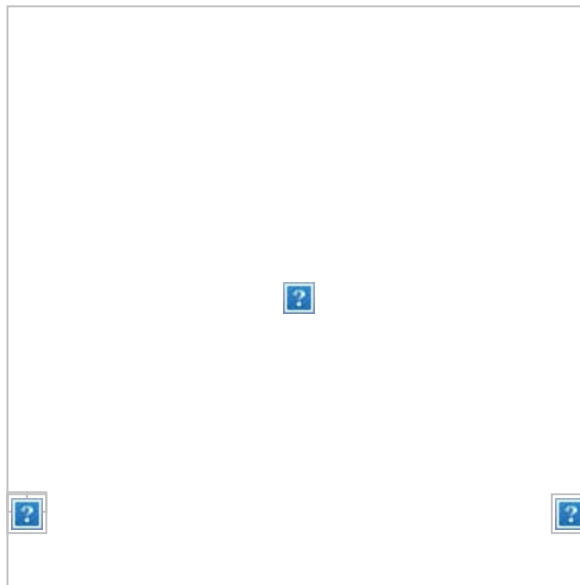
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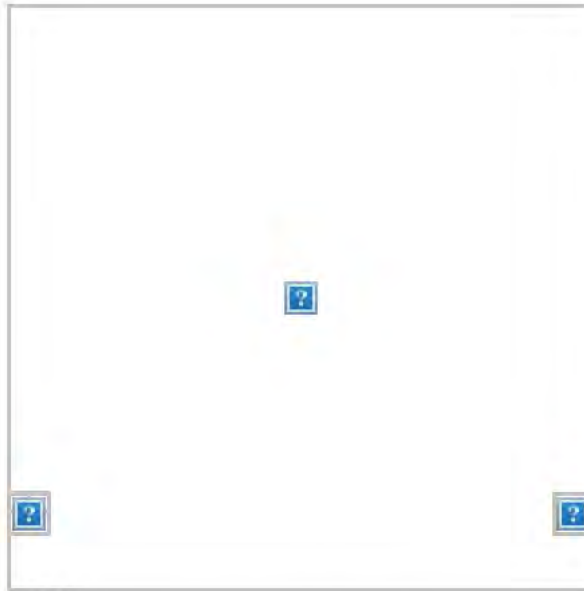
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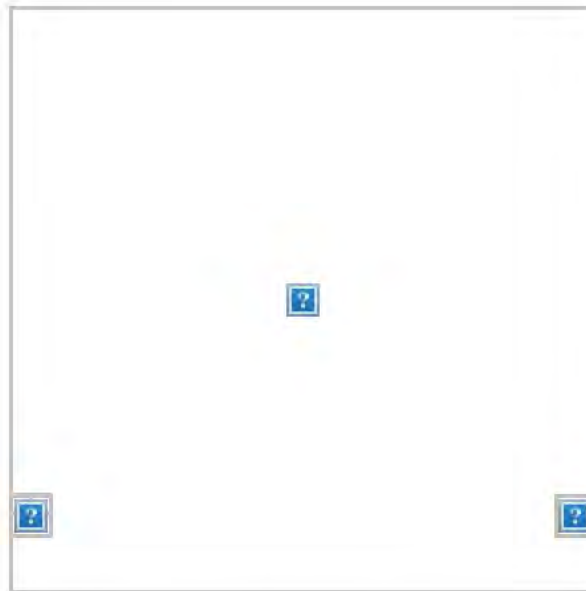
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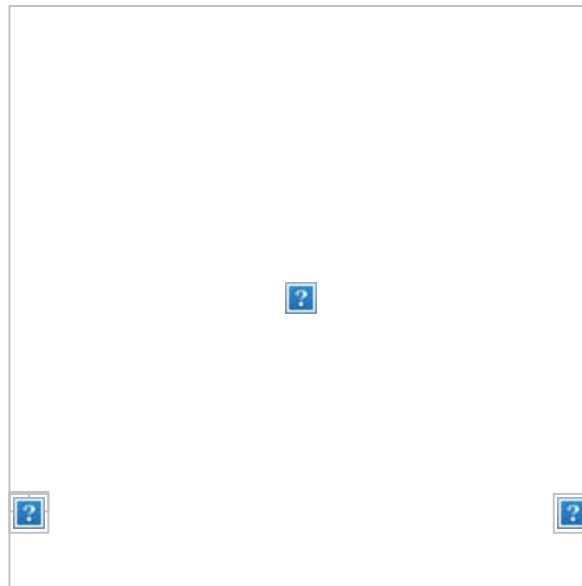
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**Subject:** Fifth Circuit Freezes Big Obamacare Case Amid Trump's Shutdown  
**Date:** Friday, January 11, 2019 12:05:51 PM

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## The National Law Journal Newsroom Update

Jan 11, 2019

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### **Fifth Circuit Freezes Big Obamacare Case Amid Trump's Shutdown**

The order comes as the nation edges toward it's longest shutdown in history.

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**Subject:** More Minority Women Ascend to Law Dean Jobs  
**Date:** Friday, January 11, 2019 6:04:40 AM

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## The National Law Journal Daily Headlines

Jan 11, 2019

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### A MESSAGE FROM THE EDITOR

In today's top story, Karen Sloan reports on the increase in minority women ascending to law dean jobs. And in other news, Duane Morris trims billing requirements for new parents.

– Mark Bauer, managing editor, The National Law Journal



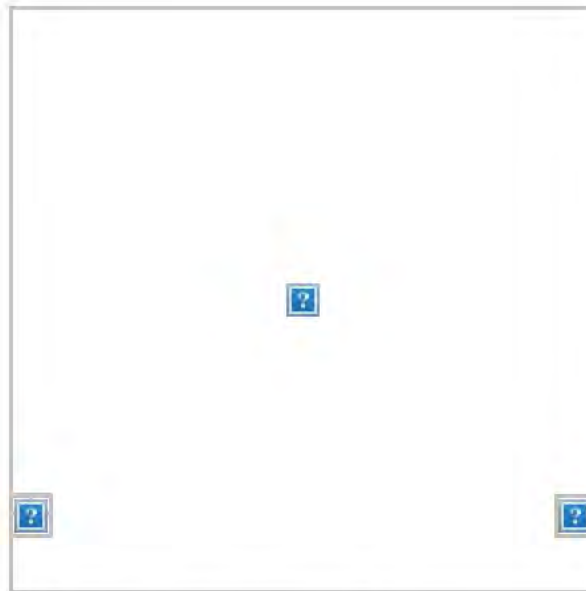
**DIVERSITY** | NEWS

### **More Minority Women Ascend to Law Dean Jobs**

By Karen Sloan

Women occupy the deans office at 35 percent of law schools, and minority women are more visible than ever in leadership... [Read More](#)





### **Duane Morris Trims Billing Requirements for New Parents**

By Meghan Tribe

As more and more firms revisit their parental leave benefits, the program lets lawyers "ramp down" and "ramp up" their... [Read More](#)



**COPYRIGHTS** | **NEWS**

### **Copyright Owners Face Uphill Battle at Supreme Court**

By Scott Graham

Several justices sounded convinced that the Copyright Act requires owners to complete registration before suing for... [Read More](#)

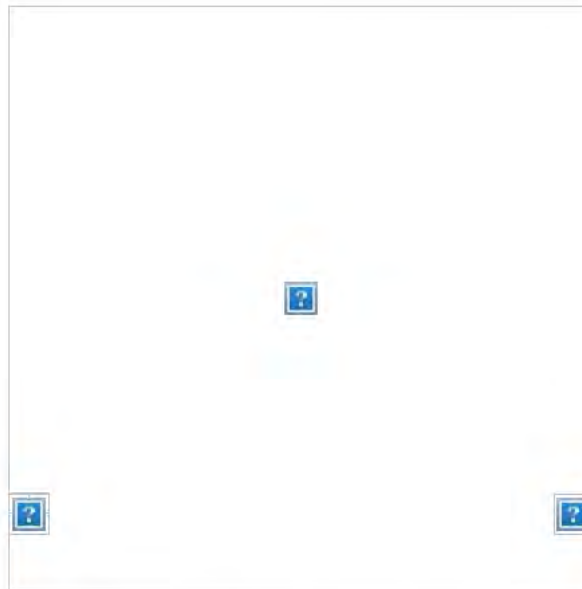


**CIVIL APPEALS** | **NEWS**

### **DC Circuit Judges Feud, and New Suits Pile Up, as Shutdown Persists**

By Mike Scarcella

Federal trial and appellate judges are grappling with requests from U.S. agencies to postpone cases, and new lawsuits... [Read More](#)



[LITIGATION](#) | [NEWS](#)

### **Judge Boots Plaintiffs Firm From Uber Case Over Former Chamber Lawyer's Conflict**

By Ross Todd

A federal judge in San Francisco found that Warren Postman's work alongside Uber while at the Chamber in a lawsuit challenging...

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[LAW FIRMS - LARGE](#) | [NEWS](#)

### **Gibson Dunn, Reporters Committee Ask Courts to Unseal Records in Apparent Mueller Subpoena Fight**

By Ross Todd

A Gibson, Dunn & Crutcher team headed by Theodore Boutrous Jr. is asking the U.S. Supreme Court and D.C. Circuit to...

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CIVIL APPEALS | NEWS

### **How Justice Thomas Picked Atlanta Solo Amy Weil for Coveted Amicus Argument**

By Marcia Coyle

"I have been pretty relentless at times. I give my card everywhere and he probably has a lot of them, Amy Weil... [Read More](#)



LAW FIRM PARTNERS | NEWS

### **Akin Gump Adds Audit Watchdog Modesti in Latest DC Hire**

By Meghan Tribe

Claudius Modesti, former enforcement chief at the Public Company Accounting Oversight Board, is joining the firm on... [Read More](#)



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## RESOURCES

### **5 Big Trends Changing Law Firm Business Acceptance**

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Five global legal trends are testing the limits of even the best new business acceptance models. Explore their effects, get tips on how to adapt to them, and an assessment checklist. [Learn More](#)

### **2018 Data Discovery Legal Year in Review**

DATE: Thursday, December 13, 2018 TIME: 2 p.m. EST | 11 a.m. PSTCOST: ComplimentarySponsored by: 2018 [Learn More](#)

## MORE FROM THE ALM NETWORK

### **Justices Debate Overturning Precedent in California Tax Case | The Recorder**

The Recorder

Wilmer's Seth Waxman argued for the state of California asking the U.S. Supreme Court to overturn a decision that permits... [Read More](#)

### **UC-Berkley Elections Expert Says Georgia's Lt. Governor Contest Is 'In Substantial Doubt' | Daily Report**

The Recorder

A hearing on a motion to dismiss the election lawsuit is scheduled for Wednesday morning. [Read More](#)

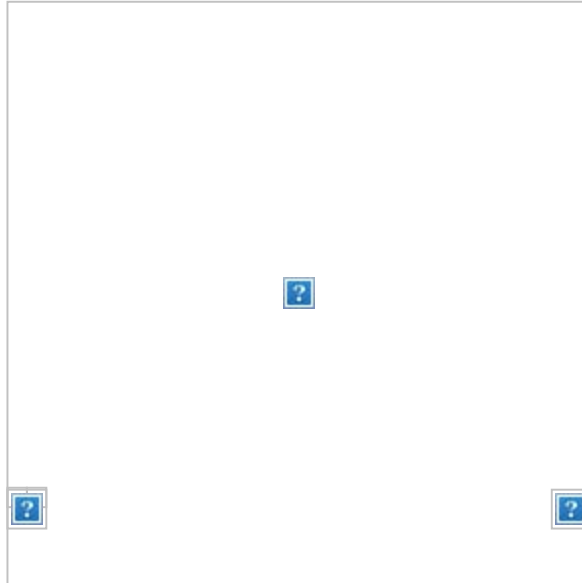
### **Gavin Newsom Draws Ex-Big Law for Key Leadership Posts | The**



## **Recorder**

The Recorder

Alums of Boies Schiller Orrick and Manatt are finding new roles in Gov. Newsom's administration. [Read More](#)



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## **MERITALK READ ALL ABOUT IT**

### **January 11, 2019**

#### **CONGRESS**

##### **Rep. Kelly Joins E&C Committee**

Rep. Robin Kelly announced that she will serve on the House Committee on Energy and Commerce, but a congressional staffer told MeriTalk Kelly will continue to work on tech issues.

[READ MORE](#)

#### **CYBERSECURITY**

##### **Americans Think U.S. Is Prepared for Cyberattack**

Just over half of Americans think the United States is “prepared” to handle a “major cyberattack,” according to a Pew Research Center report.

[READ MORE](#)

#### **WORKFORCE**

##### **Feds May Not Lose Annual Leave**

Federal employees who scheduled “use-or-lose” annual leave at agencies affected by the partial government shutdown can have that time restored, according to a memo released by OPM.

[READ MORE](#)

#### **EVENT**

##### **ServiceNow Federal Summit**

Join David Shive, Chief Information Officer, General Services Administration for the 2019 ServiceNow Federal Summit on March 4. He will drill down on ways agencies can break down roadblocks to automate workflows, enhance team efficiency, and create intuitive systems – you don’t want to miss. All attendees are eligible to receive five continuing professional education (CPE) credits.

[REGISTER](#)

#### **ARTIFICIAL INTELLIGENCE**

##### **AI and Automation Contract Vehicle**

The Program Support Center at HHS is seeking to establish a contract vehicle that will offer artificial intelligence, automation, and other emerging technology services.

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**From:** [The Well News](#)  
**To:** [McFerran, Lauren](#)  
**Subject:** Levin, Senate Chiefs of Staff, House/Senate Calendar, and Peters' Bipartisan Weekly Address  
**Date:** Saturday, January 12, 2019 12:11:26 PM

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## Straight from The Well

Saturday, January 12, 2019

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### FIRST DAY IN CONGRESS

The Well News Interviews Rep. Andy Levin (MI-09)

Capture4

The third video in our series highlighting new members who were willing to discuss their plans for the year ahead with us. A human rights activist, newly elected Representative Andy Levin has been advocating for working families since the 1980s. Now he brings his fight to Washington. Watch him as he navigates his first day as a member of the 116th Congress.

Watch Now

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FIELD TRIP

## Michigan Delegation Heads to the North American International Auto Show!

On Monday, Michigan Representatives Debbie Dingell, Dan Kildee, Andy Levin, Elissa Slotkin and Haley Stevens are heading to the North American International Auto Show in Detroit. The group is scheduled to do a joint interview with WJR's Paul W. Smith before touring the General Motors, Volkswagen, Toyota, Nissan, FCA, KIA, Honda and Ford exhibits. The members of the group say the trip reaffirms their commitment to work together to support the auto industry and advance mobility.

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## HOUSE, SENATE SEND BIPARTISAN BILL TO TRUMP TO PROTECT GOVERNMENT WORKERS HURT BY SHUTDOWN

Government Employee Fair Treatment Act

With 450,000 federal workers being forced to work without pay, and another 380,000 federal workers sent home over the holidays without pay, the ongoing shutdown is taking its toll on families and public servants. It is now the longest shutdown in U.S. history, surpassing the shutdown from late 1995 to early 1996, lasting 21 days.

The Government Employee Fair Treatment Act, which passed unanimously in the Senate and was approved across party lines in the House of Representatives, would guarantee that furloughed federal employees will be paid retroactively and stipulates that all employees will be paid as soon as possible after the lapse in appropriations ends. The bill now heads to the President's desk to be signed into law. McConnell indicated on the Senate floor that he had assurances from the White House that President Trump would sign the bill into law.



[Read More](#)

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## NEW CHIEFS

### U.S. Senate

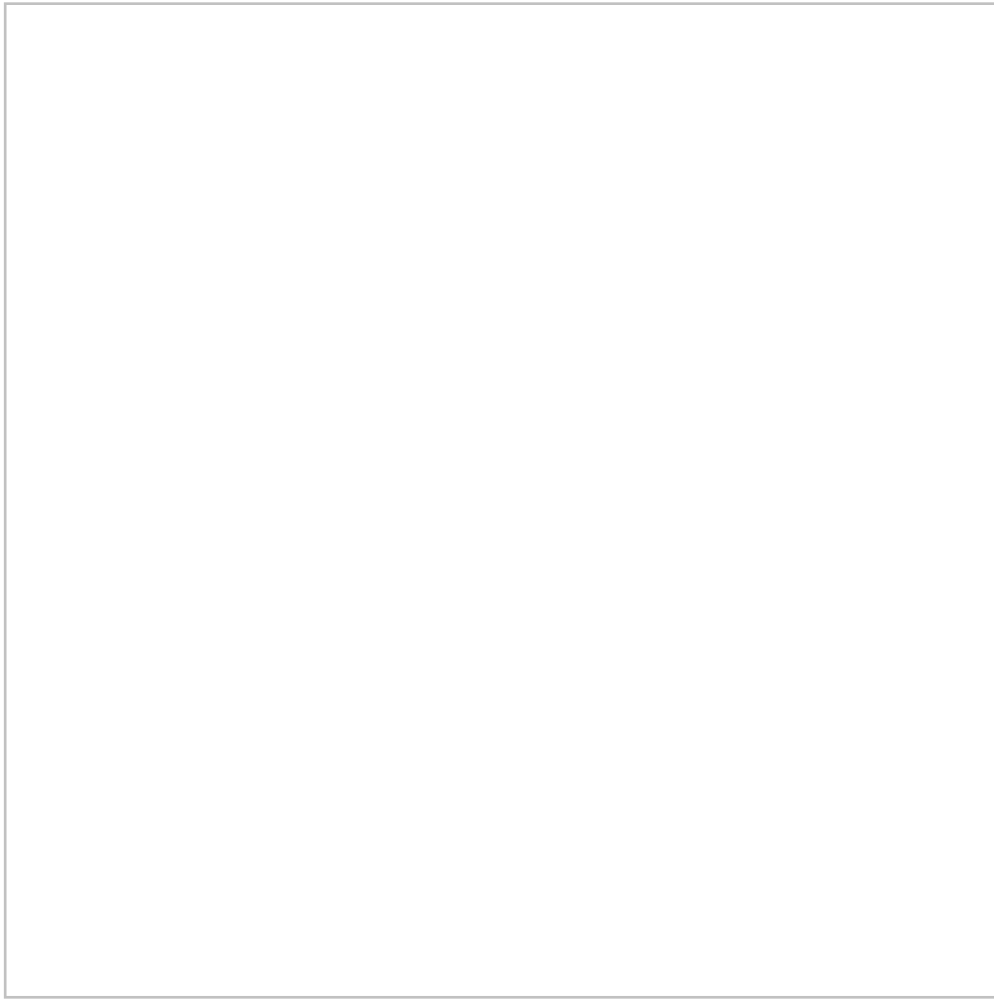
As new members of the U.S. Senate take office, one of the first and most important decisions they make is the appointment of a chief of staff. The Well News is tracking all of these top hires.

[See List](#)

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## PETERS HIGHLIGHTS BIPARTISAN LEGISLATION TO SECURE BORDER IN WEEKLY DEMOCRATIC ADDRESS

*"When President Trump says Democrats are against border security and for open borders, he's lying"*



On Friday, Congressman Scott Peters of California delivered the Weekly Democratic Address. Peters, a centrist member of Congress known for his practical approach to problem solving, represents California's 52nd congressional district that includes coastal and central portions of the city of San Diego.

At a time when political tensions are at an all time high over the issue of immigration and Trump's proposed border wall, Peters reminded us that there was, in fact, bipartisan legislation last Congress proposed by Representatives Pete Aguilar of California and Will Hurd of Texas that included significant border security measures.

[Read More](#)

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IN THE NEWS

- [Rural Recycling Hit Hard by Shifting Scrap Market](#)  
By Rebecca Beitsch
  - [Did CIA Director Gina Haspel Run a Black Site at Guantanamo?](#)  
By Carol Rosenberg
  - [Myanmar Judge Rejects the Appeal of Two Jailed Reuters Reporters](#)  
By David Pierson
  - [A Trial on Whether Trump Has the Right to End TPS for Haiti Ends: Now Comes the Wait](#)  
By Jacqueline Charles
  - [Nicaragua Accuses US of Financing International Coup as OAS Considers Punishment](#)  
By Franco Ordonez
- 

## THE ONE HUNDRED SIXTEENTH

### Session One Calendar

This calendar captures the days that the U.S. Senate and U.S. House of Representatives are in session during 2019 in one place.

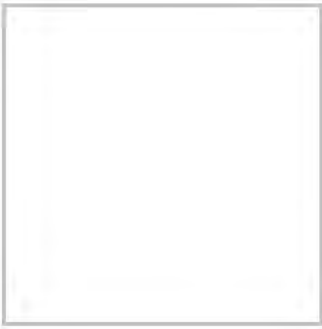
Download Calendar

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## WEEKEND LONGREAD

### Firefighters' Fateful Choices: How the Woolsey Fire Became an Unstoppable Monster

It was clear from the beginning that the Woolsey fire had the potential to be a monster. It broke out mid-afternoon Nov. 8 on Boeing property near the Santa Susana Pass, fueled by strengthening winds and burning toward populated areas. But during the critical



first hours, the Woolsey fire took second priority.

[Read More](#)

## CARTOONS OF THE WEEK

20190108edshe-b





20190110edphc-a

20190107edbbc-a

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**From:** [NLJ Weekend Edition](#)  
**To:** [McFerran, Lauren](#)  
**Subject:** Law Firms Face "Uncharted Waters" as Shutdown Grinds Some Practices to a Halt  
**Date:** Sunday, January 13, 2019 5:00:45 PM

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## National Law Journal Weekend Edition

Jan 13, 2019

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### A MESSAGE FROM THE EDITOR

In case you missed it, reporter Christine Simmons has a story about the shutdown and what that means for law firm financials in Q1. And Marcia Coyle reports on how Justice Thomas picked Atlanta solo Amy Weil for coveted amicus argument.



– Mark Bauer, managing editor, National Law Journal

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[ANTITRUST](#) | [NEWS](#)

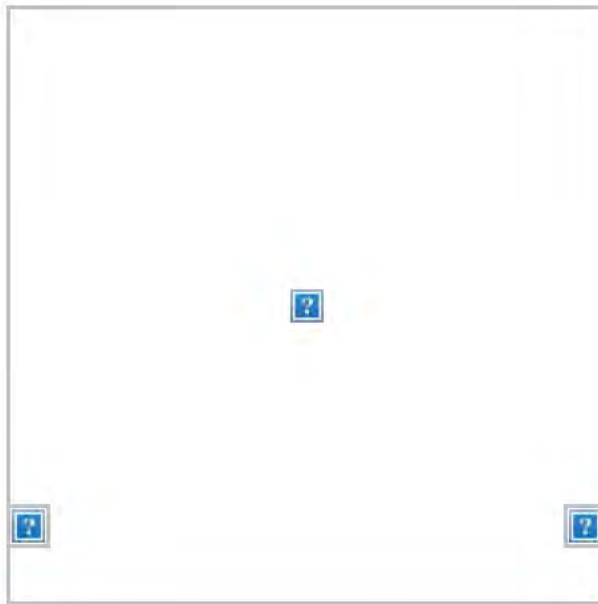
**Law Firms Face 'Uncharted Waters' as Shutdown Grinds Some Practices to a Halt**

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**How Justice Thomas Picked Atlanta Solo Amy Weil for Coveted Amicus Argument**

[LAW FIRM MANAGEMENT](#) | [PODCAST](#)

**The Modern Law Office: Can You Handle It?**



## Editor's Picks

### **As Rich Firms Set the Market, Mid-Tier Firms Wrongly Follow, Report Says**

A new report warns Am Law Second Hundred firms from following the same business model as their wealthier competition. [Read More](#)

### **'Knock It Off': Judge Upbraids Reed Smith Partner Litigating Mueller Case**

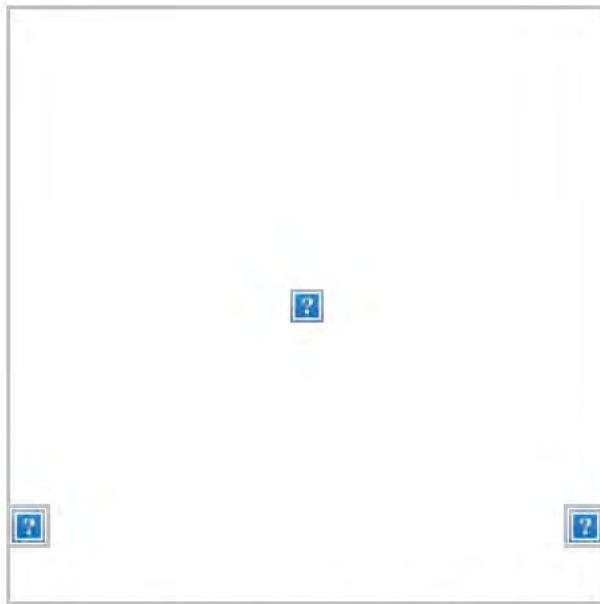
Reed Smith partner Eric Dubelier, who represents Concord Management and Consulting, raised the prospect that he might... [Read More](#)

### **Manafort Lawyers Botch Redactions, Revealing Details on Alleged Trump Contacts**

Defense lawyers said prosecutors were overblowing a text message exchange cited as proof that Manafort tried to mislead... [Read More](#)

### **The Power of Just Getting Better at What You Already Do**

Investing in existing, rather than new, practices builds sustainability and drives improved profitability [Read More](#)

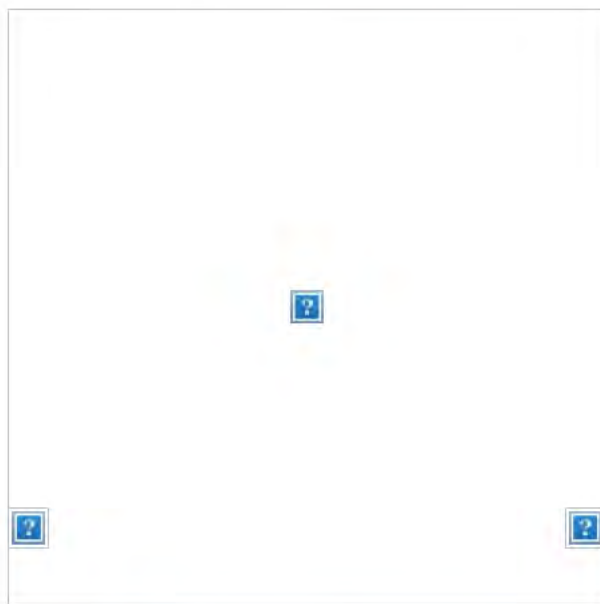


### **The Internet of Bodies: A Convenient—and, Yes, Creepy—New Platform for Data Discovery**

The Internet of Things (IoT) is moving onto and inside the human body, becoming the Internet of Bodies (IoB). So what... [Read More](#)

### **FCPA Lawyer Predicts GCs, CCOs Have Targets on Their Backs in 2019**

In an interview Wednesday about his law firm's just released 2019 FCPA Digest, Shearman & Sterling partner Philip Urofsky... [Read More](#)



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## **MERITALK READ ALL ABOUT IT**

### **January 14, 2019**

#### **CLOUD COMPUTING**

##### **Cloud Concerns in 2019**

Recent studies on cloud and its perceptions in the market reveal concerns over accountability for security in the cloud, poorly communicated cloud strategies, and confusion over what the approach to cloud really means.

[READ MORE](#)

#### **SHUTDOWN**

##### **Federal Worker Back-Pay Bill**

The House passed a bill to ensure that Federal employees affected by the partial government shutdown will receive their full pay when appropriations are restored to agencies.

[READ MORE](#)

#### **SHUTDOWN**

##### **Dems Offer Debt Protection Bill**

Democrats in both the House and the Senate have introduced a bill to prohibit landlords and creditors from taking action against employees at Federal agencies impacted by the partial government shutdown.

[READ MORE](#)

#### **EVENT**

##### **Veritas Public Sector Vision Day**

Veritas Public Sector Vision Day is less than a month away, and seats are filling up fast. Register today to hear from keynote speakers, Max Everett, CIO of Energy, and Maria Roat, CIO of SBA. We'll also be joined by several other IT thought leaders from Treasury, NSF, Air Force, USDA, and more, for a discussion on next-generation data management. Attendees are eligible to receive 3.5 continuing professional education (CPE) credits. Register today to reserve your seat.

[REGISTER](#)

#### **QUANTUM**

##### **Quantum Computing is Next Arms Race**

The U.S. has formally joined the race for the next big thing—quantum computing—hoping to keep pace with China in developing the technology.

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**From:** [The National Law Journal Daily Headlines](#)  
**To:** [McFerran, Lauren](#)  
**Subject:** Former Covington Lawyer Named USPTO's Deputy GC and Solicitor  
**Date:** Monday, January 14, 2019 6:03:30 AM

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## The National Law Journal Daily Headlines

Jan 14, 2019

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### A MESSAGE FROM THE EDITOR

In today's top story, a former Covington lawyer is named USPTO's deputy GC and solicitor. He will represent the USPTO in court and provide advice on IP-related policies and issues. And in other news, how will the shutdown impact law firm financials in Q1?



– Mark Bauer, managing editor, The National Law Journal

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#### PATENT LICENSING AND TRANSACTIONS | NEWS

### **Former Covington Lawyer Named USPTO's Deputy GC and Solicitor**

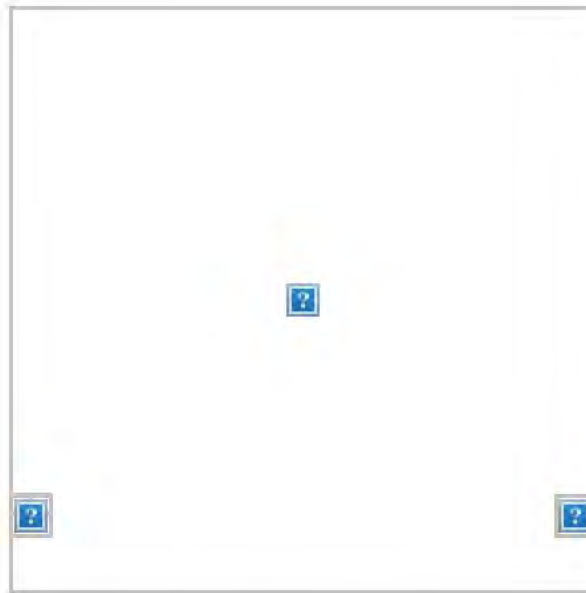
By Phillip Bantz

Thomas Krause will represent the USPTO in court and provide advice on IP-related policies and issues. He said in a statement...

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ANTITRUST | NEWS

### **Law Firms Face 'Uncharted Waters' as Shutdown Grinds Some Practices to a Halt**

By Christine Simmons

Legal Industry first quarter financial results may see a dent as court appearances and deals fall prey to political... [Read More](#)



### **Data Snapshot: Is U.S. Law Firm Expansion Stalling?**

Firms ranked in the NLJ350 index have opened a swath of new offices across the U.S. over the past five years. But they... [Read More](#)



COURT ADMINISTRATION | NEWS

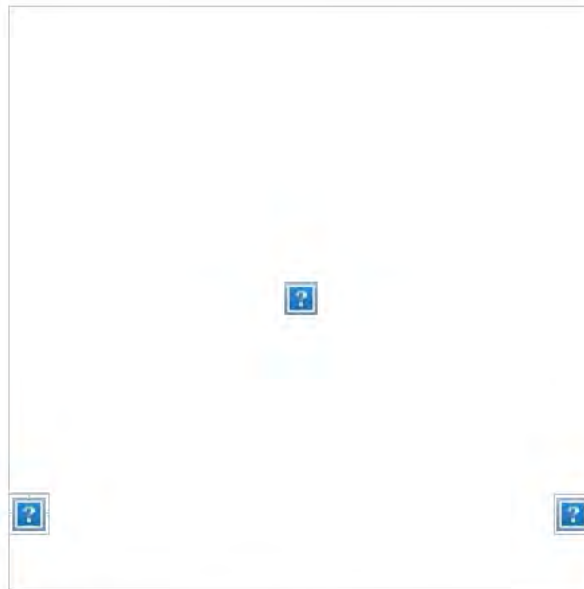
### **Ruth Bader Ginsburg's Recovery Is 'On Track,' Supreme Court Says**



By Tony Mauro

The Supreme Court said Ginsburg would also not be on the bench next week when the justices hear arguments Monday, Tuesday...

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CIVIL APPEALS | NEWS

## **Fifth Circuit Freezes Big Obamacare Case Amid Trump's Shutdown**

By Nate Robson

The order comes as the nation edges toward its longest shutdown in history. [Read More](#)



LAW FIRM CLIENT RELATIONSHIPS | COMMENTARY

## **Can Lawyers Represent Hostile Foreign Governments Charged in the Mueller Probe?**

By Rebecca Roiphe

The Mueller investigation has highlighted some of the potential problems for lawyers who choose to represent hostile... [Read More](#)



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### **More Minority Women Ascend to Law Dean Jobs**

By Karen Sloan

Women occupy the deans office at 35 percent of law schools, and minority women are more visible than ever in leadership... [Read More](#)



### **Duane Morris Trims Billing Requirements for New Parents**

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Texas Lawyer

Retaliation claims anchored in a Facebook post gave the appeals court a fresh chance to address the scope of Title VII... [Read More](#)

### **UC-Berkley Elections Expert Says Georgia's Lt. Governor Contest Is 'In Substantial Doubt' | Daily Report**

Texas Lawyer

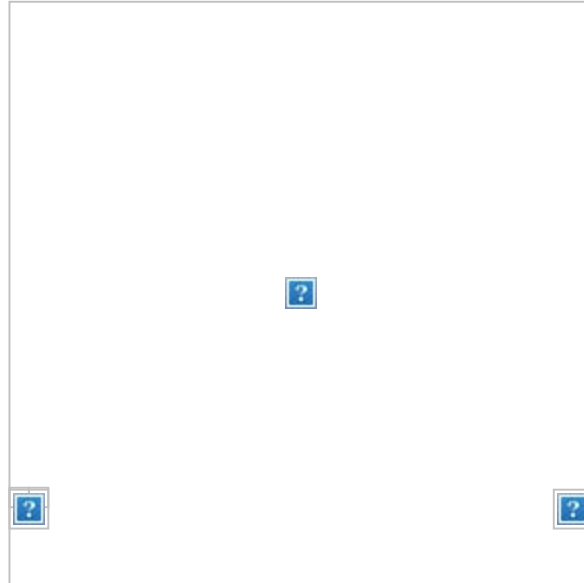
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### **Justices Debate Overturning Precedent in California Tax Case | The**

## **Recorder**

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Wilmer's Seth Waxman argued for the state of California asking the U.S. Supreme Court to overturn a decision that permits... [Read More](#)



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